JESUITS' ESTATES

ANSWER

TO A

COMMUNICATION IN THE "MONTREAL STAR"

OF THE 19TH MAY 1888,

BY

U. E. L.

Justitia elevat gentem.

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(Communication of the 19th May 1888.)

THE JESUIT PROPERTY.

History of the Order in Quebec Province — A Mendicant Order — List of Property held in 1824—Confiscation by the Crown—Common to Roman Catholics and Protestants for Educational purposes.

Inasmuch as this question is set forth as one of the important questions which the Mercier Ministry is to legislate upon during the coming session, it may not be amiss to give a short statement of the case as it stands. The early annals of our country abound with instances of Jesuit zeal for the extension of Christianity—amongst the Indian tribes. The history of the order during these years is a long record of self-sacrifice and devotion. The Jesuits have the reputation of being the best educated of the religious orders, and are said to be exceptionally clever even in a worldly sense.

In the first Bull obtained by the Jésuits from Pius V, in 1571, the society is declared to be

A MENDICANT SOCIETY.

and cannot possess real property, living by unfailing alms, etc. The Bulls of Gregory XIII of 1576 and 1582 vested all property in the Father General. Notwithanding this provision of their constitution, it was absolutely necessary, in order that the Indians might be Christianized and converted, that the worthy fathers should have some land. On reference to a schedule of their property, made in 1787 and contained in the thirty-third volume of the Journals of the House of Assembly of the Province of Lower Canada, 5 George 4, i e., the session of 1824, the following appears as their little property :

1. Six superficial arpents on which the Quebec college and church are erected, given for the instruction of the inhabitants.
2. The two Lorettes or Seigniory of St. Gabriel.
3. The peninsula of Lavacherie.
4. Sillery, near Cap Rouge.
5. Belair.
6. Cap de la Magdelaine, near Three Rivers.
7. Batiscan.
8. The Island of St. Christophe, near Three Rivers.
9. Laprairie de la Magdelaine.
10. A piece of ground at St. Nicholas.
11. Eleven arpents of ground at Pointe Levis.
12. The Isle of Reaux, below the Island of Orleans.
13. Six arpents at Tadousac.
14. The Fief Pacherigny, near Three Rivers.
15. Another lot at the same place.
16. A remnant of ground extending to a small river near Lake St. Peter.
17. A number of lots in Quebec City, now built upon, and many used as public streets.
18. The ground used by the church and Mission House of Montreal, etc.

The whole amount of Jesuit lands was 48,000 acres in the district of Montreal: 439,000 in the district of Three Rivers; and 129,500 in the district of Quebec. The value of their property was then estimated at two to three millions of dollars. The present Government will have to make a new loan, of some magnitude, if it is decided to reimburse the present recently created Order of Jesuits.

Inasmuch as the order was a mendicant order, and could not hold any property in its own right, they held the above properties in trust for educational and religious purposes. In 1774, they were suppressed by a Royal decree and their property was confiscated, except what the surviving few might need for

A COMFOTABLE SUBSISTENCE

during their natural lives. Had they not been suppressed in 1744, their property would have become the property of the Crown at the decease of the last Jesuit in 1800. In 1789, there were only four living. As a matter of fact all the property of the Jesuits was seized by the Crown in 1800 by the Sheriff of Quebec, and the document is

enrolled in the first Register of Patents and Commissions, folio 446, Quebec, March 8, 1880.

Up to the year 1831 the revenues from these estates appear to have gone into the general treasury, and portions from the year 1821 were appropriated for educational purposes. In 1831 by virtue of the Act. 1, William IV, it was provided that all the moneys arising out of the estates should be kept apart and applied exclusively to the purposes of education. The revenues from that date have been divided among the grammar schools, academies, nunneries, convents and colleges of Quebec. The fund is and has been

A COMMON FUND

for Roman Catholic and Protestant education. In as much as the Roman Catholic branch of the Council of Education consists largely of the bishops of the province, who administer the funds coming from this source, the fact of the Jesuits trying to wrest the control from the bishops is explained. By the "definitive treaty" of 1763 the King of England acquired absolute and unconditional jurisdiction over the Jesuits' estates. A vacant estate becomes the property of the Crown. By escheat of the property on the death of the last survivor in 1800 the Crown became absolute owner of the property. No ecclesiastical order has had any right or title to the property since 1774.

The Jesuits in France in the 16th and 17th centuries had no legal title to property. All the title existing was vested in the General at Rome. He being an Italian and an alien, not owing allegiance to the King of France, could hold no real property either in France in 1763 up to the conquest, and the law of England was the same at the date of or after the conquest.

The present company of Jesuits have had a legal existence in this province for only a few months. They cannot pretend to be the successors to a company which

NEVER HAD ANY LEGAL EXISTENCE.

At any rate it is quite clear that the Province of Quebec has nothing to do with the question since the forfeiture of the former so called Jesuits' property was effected by the Imperial Government. When Clement XIV suppressed the Company of Jesus in 1773, he provided that their property should return to the church for pious uses.

The following clause in a petition to the Legislature of Quebec is conclusive proof that the claim of the Jesuits was inadmissible :—

"Your petitioners humbly represent that the Order of Jesuits being

extinct in this country, their natural successors are the Roman Catholic bishops of the diocese."

The petition is signed by Joseph, Bishop of Quebec, P. F. Turgeon, coadj. of Quebec, J. T. Lartigue, Bishop of Montreal.

In answer to a question of the late F. Davin, M.P.P. at the session of December 10, 1873, whether the Provincial Government in accepting from the Federal Government the Jesuits' estates, intented to indemnify the former proprietors, the then Premier of the Government replied that the Government was not bound to indemnify any corporation whatsoever. In 1876 the Jesuit barracks property was transferred by the Federal Government. In 1877 it was resolved to demolish the buildings on account of their dangerous state. In 1878 eight bishops joined in a representation to the Provincial Government claiming the property for the church at large on the ground that they were the successors and heirs to the property of the Jesuits on their suppression. The Government of the day

DECLINED TO ADMIT

any responsibility in the matter and referred the petitioners to the Federal Government. The Act 1, William IV, devoted all the proceeds from the properties in question exclusively to the purposes of education. The Speech from the Throne proposes that any compensation awarded will include a fair compensation to the Protestant minority. This is just and equitable. But the following questions remain unanswered until the project of settlement is fully submitted to the House.

Have the Governments any right to divert this fund from the educational fund in view of the fact that the claimants have no legal or equitable claim for compensation? Will the acknowledgment of this claim be a prelude and a precedent for further claims for compensation for the balance of the property amounting to millions of dollars? For it must be remembered that it is only the Jesuits' Barracks property which, so far as we can learn, is included in the arrangement. Is this arrangement only the insertion of the little end of the wedge, or is it final?

THE JESUIT PROPERTY.

(STAR, *26th May* 1888.)

To the Editor of the STAR :

SIR,—Under this title a communication appeared in Saturday's (May 19) STAR. The contributor premised that it would " not be amiss to give a short statement of the case as it stands." His communication however, proved to be a long mis-statement of a question of the deepest interest to the community at large. It is an easy task to heap up gratuitous assertions, but it requires time and space to refute them ; unless we have recourse to the justifiable, but to many, unsatisfactory expedient of retorting *quod gratis asseritur gratis negatur.*

We say the subject is of the deepest interest to the community ; for whether your readers be Catholic or Protestant, as fair minded men, they instinctively wish to see justice done. We have all admired the many noble qualities of the German Emperor, and to heighten that admiration the press has heralded forth in every land his chosen maxim,'*Justitia elevat gentem*," a text borrowed, or an adaptation drawn, from the 14th chapter of Proverbs. In our school days the same idea was tersely put, " Cheating never prospers." If there be any virtue in that saying once this question is fully elucidated and justice done, the finances of our province will, we trust, be of more plethoric habit. For an honest man, the first question is not what will follow if I restore ill-gotten goods, but rather have I ill-gotten goods which in justice I am bound to restore? If so, even as the Pagans said, *Fiat justitia et ruat cœlum !*

I pass over the inventory of the Jesuits' estates as of secondary importance for the present, though it be incomplete, admitting with your contributor that the valuation would foot up several millions ; but knowing at the same time that the final and definitive claim of the Jesuits will be much more modest. I come now to the many inaccuracies embodied in the communication, and shall number them off for easy reference in the order in which I find them :

List of Mis-statements.

1. Inasmuch as the order was a mendicant order it could not hold property in its own right.

2. They held the above property in trust for educational purposes.

3. In 1774 they were suppressed by a Royal decree, and their property was confiscated, except what the surviving few might need for comfortable subsistence during their natural lives.

4. Had they not been suppressed in 1744 (1774 I suppose), their property would have become the property of the Crown at the decease of the last Jesuit in 1800.

5. Up to the year 1831, the revenues from these estates appear to have gone into the general treasury, and portions from the year 1821 were appropriated for educational purposes.

6. The revenues from that date (1831) have been divided among the grammar schools, academies, nunneries, convents and colleges of Quebec.

7. Inasmuch as the Roman Catholic branch of the Council of Education consists largely of the bishops of the province, who administer the funds coming from this source, the fact of the Jesuits trying to wrest the control from the bishops is explained.

8. By the "definitive treaty" of 1763, the King of England acquired absolute and unconditional jurisdiction over the Jesuits' estates.

9. A vacant estate becomes the property of the Crown. Hence, by escheat of the property on the death of the last survivor, in 1800, the Crown became absolute owner of the property.

10. No ecclesiastical order has had any right or title to the property since 1774.

11. The Jesuits in France in the 16th and 17th centuries had no legal title to property. All the title existing was vested in the General at Rome.

12. The General being an Italian and an alien, not owing allegiance to the King of France could hold no real property either in France or its colonies. This was the law in France in 1763, up to the conquest, and the law of England was the same at the date of or after the conquest.

13. The present company of Jesuits have had a legal existence in this province for only a few months.

14. They cannot pretend to be the successors to a company which never had any legal existence.

15. At any rate it is quite clear that the Province of Quebec has nothing to do with the question, since the forfeiture of the former so called Jesuits' property was effected by the Imperial Government.

16. When Clement XIV suppressed the Company of Jesus in 1773, he provided that their property should return to the church for pious uses.

17. The following clause in a petition to the Legislature of Quebec is conclusive proof that the claim of the Jesuits was inadmissible: "Your petitioners humbly represent that the order of the Jesuits being extinct in this country, their natural successors are the Roman Catholic bishops of the diocese."

18. In 1877 it was resolved to demolish the buildings (Quebec College) on account of their dangerous state.

The above statements are either wholly without foundation inaccurate, misleading, or foreign to the question. I shall qualify them separately as I proceed, but before doing so would observe that the list of correct statements contained in the communication would be much shorter that the foregoing.

The Society of Jesus, as a Mendicant Order, could and did hold property in its own right.

I.

In asserting at the outset that mendicant orders could not hold property in their own right, your contributor had in view a statute either of canon law or of civil law in a Catholic country. Protestant countries, in fact, ignore religious orders, and treat them as civil corporations or merely recognize their individual members as enjoying before the law equal rights with other citizens. In Catholic countries civil legislation was supposed to be enacted so as to harmonize with canon law, of which the Church was the true expounder. When, therefore, the decisions of doctors of Sorbonne, or of the advocates of the various parliamentary bodies of France are at variance with canon law, as expounded by the Church, such decisions must needs be held as not valid, not only by every Catholic, but hypothetically by every Protestant. That is, if the latter take at all into account canon law, so as to determine what a mendicant order is or is not, they must frame their definition in accordance with the declared intention of the Catholic legislator, and the sole authority in the Catholic Church who can canonically establish or suppress religious orders. The Supreme Pontiff approves their rules, declares their vows solemn or simple, modifies if needs be, according to the exigency of the times, their mode of life, and determines their relations with civil society, in contact with which they necessarily come. A professed religious, incapable of possessing property before the church, he may empower to hold real or personal estate before civil law, as, in fact, he does in all Protestant and in most Catholic countries, modernized in the sense of the French revolution.

The unqualified assestion that a mendicant order can hold no property in its own right is at variance with canon law. A mendicant order holds property and has always done so. Or to be more accurate, each separate community owns in its own right the monastery it occupies. The individual religious holds and can hold no property, save by a canonico-legal fiction before the civil law of a country which refuses to take cognizance of him otherwise than as a citizen.

Since the Revolution, jurisprudence on these matters has ceased to exist in France. Prescinding from the constitutions of the divers religious societies, constitutions which suppose or establish the non-solidarity between houses of the same order, this state of things is supported on other incontestable grounds. It was recognized by letters patent, which in sanctioning each religious establishment, college, monastery, or community imparted to each its peculiar and distinctive civil existence. These letters patent assured to each the separate and unassailable right of property over its patrimony and domains.

In virtue of similar royal enactments, each religious house enjoyed the right of making contracts through its administrator ; that of sueing and being sued, of pleading and being impleaded ; the right of acquiring and accepting donations, pious behests indefinitely, or with limitation, as the case might be, was equally conceded. Thus there existed as many bodies corporate as there were houses duly authorized, and the goods and chattels of the one were never confounded with those of the other.

This was the case of the Jesuits in Canada, under French rule. A glance at the Letters Patent of Louis XIV and Louis XV still preserved in the provincial archives will convince the incredulous. The Jesuits of Canada, as we intend to make good, were a body corporate before the conquest (which none will dispute), at the conquest and after the conquest, down as far even as 1791. And if they then ceased so to be, it was by an unwarrantable measure on the part of the Crown. Their civil status was known and recognized by the Supreme Pontiff, known and recognized by the Imperial Government.

The Jesuits held their property for Roman Catholic religious educational purposes.

II.

" They held their property in trust for educational purposes." This unqualified statement is also inaccurate. Of course I do not intend to quarrel with your contributor for affirming that they held it for

religious purposes. Had he said they held it *in fee simple for the purposes of religious education*, I would have had no fault to find : though other objects are also mentioned in some of the deeds of donation, while again other donations were made for the objects of their institute, or with no specified object mentioned.

In the archives of the Gesu in Rome there may still be seen a letter of in Father Jerome Lalemant, dated from Quebec, 14th September, 1670, answer to the General's enquiries concerning their obligations. It says :

" The College of Quebec, according to the text of its foundation, is for succour and spiritual instruction, that is to say, catechetical instruction of the Canadians, in other words, of the Indians, to this alone are we held in justice. But gradually French children were received, as there is no other school. Whereupon we taught reading and writing, then a little latin at the request of parents, since there is no other college ; finally, the full curriculum, for otherwise, was it urged upon us, what would be the use of the start already made ? When the Bishop landed, seeing the impossibility of recruiting in France for the priesthood, he asked us to teach philosophy, together with moral and scholastic theology, since which time five or six have been educated for Holy Orders. The Bishop has gathered from 12 to 15 students for the seminary. They attend our classes as do our boarders and day scholars. Though we are not bound in justice to teach all the sciences, how can we give them up ? Should we recall our fathers from the missions ? "

As late as 1733, that is only twenty-six years previous to the capitulation of Quebec, we have another document corroborating the foregoing, it was copied by the late Father Felix Martin from the original in the Archives of the Marine, Paris :—

BEAUHARNOIS, GOVERNOR–GENERAL : HOCQUART, INTENDANT.

" The Governor and Intendant present a petition to the Minister to secure a third teacher for the college. Of the three professors, one (Father François Bertin Guesnier) teaches alternately philosophy and theology. If the students who have completed their humanities find the course of theology open they must wait two years for their philosophy. This discourages them and they give up their studies. The two teachers (regents) of the lower forms (Pierre d'Incarville and J. B. Maurice) cannot suffice owing to the disparity of knowledge in their pupils. The classes should be subdivided. Appoint a professor at a salary say of 300 livres, and the Jesuits will appoint three professors of the lower forms at their own expense. They deserve this for the pains they take

in the education of youth. They maintain a brother (Pierre Le Tellier, who gratuitously teaches the Quebec boys reading, writing and arthmetic) without there being any funds given for this object."

We are told in the obituary notice of F. Guesnier, still preserved in the archives of the Gesu, Rome, that to the last he devoted himself to catechising the boys of brother Le Tellier's class, in number over a hundred.

In the Soeiety of Jesus, according to its constitution as approved by the Holy See, professed houses held only their domiciles in fee simple, while colleges, residences, etc, held not only their respective buildings in fee simple, but their revenues likewise. Individual members of course possessed no property.

Consequently it is inaccurate to say they held their property in trust, and inaccurate moreover to add that they held their property for secular educational purposes.

The Royal Instructions of 1791, to suppress the Jesuits, are a peremptory proof of their corporate existence down to that date at least.

III.

It is historically inaccurate to say that the Jesuits were in 1774 suppressed by a Royal decree, etc.

Your contributor, however, is not the first who has fallen into this error. It occurs also on page 40 of "An account of the endowments for education in Lower Canada, London 13th June, 1838, Norman and Skeen, printers." The author's name is not given, but it is known to be the work of Mr. Andrew Stuart (then a lawyer in Quebec) and of Will. Badgley. While appealing to this fact of the civil suppression, your contributor, for reasons best known to himself, holds back the text of the document itself.

Here are my grounds for contesting the accuracy of the date given. It is a historical fact that on the 21st October, 1788, the committee of the Legislative Council, in their report to Lord Dorchester, declared that as the Jesuits had retained possession of their estates under the eye and with the sanction of the Crown an enactment became necessary, whereby the King should confirm the Pope's abolition of the order, and declare its property vested in the Crown.

In his "Institutions de l'histoire," 1855, page 340, Bibaud, jeune, alludes to this report. The date of which however, by a typographical error is given as 1785. The same report of the Legislative Council, with its correct date, is discussed in the report of Alexander Gray and

Jenkin Williams, 15th * May, 1790; now, had the civil suppression of the society of Jesus taken place in 1774, this report of the Legislative Council would lose its significance, and would have been a meaningless proceeding.

Your contributor very thoughtlessly undertakes to unravel the snarled skein of this very complicated question of the Jesuits' estates, which would require years of study for one who has not already a knowledge of the general outlines of the many contradictory and very lengthy proceedings to which it gave rise. If he would take a run up to Ottawa, he would find on the shelves of the Library of Parliament (E. No. 421) a very useful Repertory entitled "Chisholm's Papers." On page 151 there occurs this passage in the Royal Instructions of the 16th September, 1791: "It is Our will and pleasure..... that the Society of Jesuits be suppressed and dissolved, and no longer continued as a body corporate or politic, and all their possessions and property shall be vested in Us for such purpose as We may hereafter think fit to direct and appoint; but We think fit to declare Our Royal intention to be that the present members of the said society as established at Quebec shall be allowed sufficient stipends and provisions during their natural lives."

Were it established beyond cavil that in the year of grace 1791 an attempt at assassination was made upon the person of His Gracious Majesty George III, it would be a little more than strong presumptive evidence that His Majesty was yet alive in that year. Here we have a document emanating from the highest authority of the realm, ordering that the society of Jesuits be dissolved and suppressed, and no longer continued as a body corporate and politic. They, therefore, had continued up to that date a body corporate. The same august authority declares it to be his intention that the present members of the said society, as established at Quebec, be allowed sufficient stipends, etc. This has very much the appearence of recognizing, in a public official document, the fact that at that time there existed a society established at Quebec, and that certain of His Majesty's subjects were recognized members of that society. Would your contributor deem it too rash for me to conclude that not only before the conquest, but at the time of the capitulation of Montreal and the whole of Canada, they were a *body corporate*, as provision is made for them as a body in that document of solemn import; and that for at least thirty-two years they continued a body corporate under English rule? What had the Jesuits

* The French version of the Report of 1824, page 103, gives the 18th may as the date of this Report.

done in the meantime to justify so unwarrantable and invasion of their civil rights of holding property, etc., rights most solemnly gurranteed them at the capitulation of the country?

(STAR, *June 2nd* 1888.)

The unjustifiable inhibition to receive new members into the Order invalidates all title through escheat for the present holders of the Jesuits' Estates.

IV

" Had they not been suppressed in 1774, their property would have become the property of the Crown at the decease of the last Jesuit in 1800."

This proposition of your contributor is, to say the least, misleading by a "suppressio veri." According to civil law, and where ecclesiastical property is not protected by canon law or by treaty, such would have been the case. But as the King of England, by the law of nations and treaty stipulations, could claim as his own those rights only the King of France enjoyed, and as the latter could have no claim on vacant ecclesiastical property, the King of England very logically had none.

The suppression of truth lies in the fact that your contributor omits to say that the Imperial Government at, or shortly after the conquest, had inhibited the religious bodies in Canada from receiving novices, and thus continuing their succession. This was another unwarrantable proceeding, and as it was against natural justice and constitutional law, it would render void in any honest court the claim of the Crown to such property as vacant. No advantage should accrue to an evildoer from his misdeeds; but I shall touch upon this point under the IX heading when refuting the claim by *escheat*.

But a small portion of the revenues up to the year 1831 went into the general treasury.

V

" Up to the year 1831, the revenues from the estates appear to have gone into the general treasury, and portions, from the year 1821 were appropriated for educational purposes."

This, I also might say, appears to be a very innocent assertion.

Lord Goderich, in his despatch of the 7th July, 1831, acknowledges that the revenues ef these estates were not unreservedly set apart for what he looked upon as the object of these donations, that is to say, education : " It is to be regretted undoubtedly that any part of those funds were ever applied to any other purpose." Lord Durham, in 1838, wrote to the Home Government : " It cannot fail to be apparent that there must be great defects existing in the administration of the Jesuits' estates. Much more than half of its entire gross computed revenue is lost in arrears and expenses – in several instances the inaccuracies detected are of the grossest character—to what cause are these defects attributable? To mismanagement, corrupt or arising from mere carelessness on the part of the individuals by whom the estates are administered?" Réné Joseph Kimber, for so long a time president of the standing committee on the Jesuits' estates, leaves us in no doubt as to the purposes to which the revenues were put—political intrigues, etc. But his arraignment of the Hon. John Stewart is by far too long to reproduce.

Casting a hurried glance at the accounts of the agents, or of the commissioners, covering this period, we are assured of the following expenditures : From 1812 to 1815, for purposes unknown, $24,487.36 ; from 1827 to 1831, pensions, $3,288.40 comprising an allowance to the Hon. H. W. Ryland, George Ryland and the Misses De Salabery. In 1829, 1830, $3,932.62 paid to the chaplain, the Rev. E. Sewell, as minister of the Trinity chapel, Quebec, with arrears from 1825. From 1818 to 1822, $28,372.57 to the Protestant Episcopal church, Quebec. In 1823, 1824, $1,200 to the Scotch church, Quebec. To the following Protestant churches the annexed sums were paid : In 1820, Aubigny $400 ; 1820, 1821, Sorel $1,200 ; 1821, Chambly $800 , 1824, Three Rivers $800 ; 1820, Montreal $4,000 ; 1824, Nicolet, $400 ; 1824, 1827, Hull, $2,000. Total to Protestant churches from 1818 to 1827, $39,-172.57.

To the Royal Institution, from 1821 to 1831, $3, 770.50. To the Royal Grammar Schools of Quebec, Montreal and Kingston, from 1817 to 1831, total, $49,481.38. These were all non-Catholic schools, and yet if there is one point transcendently clear concerning the Jesuits' estates it is that by the will of the donors they should be devoted exclusively to Roman Catholic religious purposes.

In 1802, 1803 and 1821 $4,878,20 were paid for services not specified, $259,75 going to S. Sewell, and $4,218.45 to the Hon. J. Sewell, who, accused by the Assembly, expended that sum in his voyage to England undertaken to defend himself before the Home Government.

The total of the revenue from the Jesuits' estates, from 1800 to 1831

inclusively, amounted to $198,334.85. The total of the expenses to $188,973.46, leaving a balance of $9,361.39.

I conclude consequently that it is incorrect to say that the revenues from the estates appear to have gone into the general treasury.

From 1831, as well as previously, the Estates should have been applied by legitimate administrators in favor of Catholic religious education only.

VI

I have little to say concerning this point, for the simple reason that I have not before me a detailed account of the different sums expended from 1831 to 1849. I would simply remark that it was a little late in the day to begin to dole out insignificant sums to a few Catholic educational establishments, after thirty-one years of expenditure in favor of institutions and persons unsympathetic with the Catholic religion, and that from a fund destined exclusively for Catholic religious purposes.

The "Contributor" at sea.

VII

"In as much as the Roman Catholic branch of the Council of Education consists largely of the bishops of the province, who administered the funds coming from this source, the fact of the Jesuits trying to wrest the control from the bishops is explained."

And nevertheless in my obtuseness, I candidly confess, that I require the assistance of some perspicacious interpreter to explain the riddle. The Jesuits must be an unreasonable set to find fault with the bishops controlling the Council of Education. The late Hon. Mr. Mousseau, in a public utterance, led us Catholics to believe that the bishops had very little control over the funds, or over the council at large. He gave us to understand that their Lordships were listened to with due respect, but that the superintendent and other Government officials of the Board of Education did very much as they pleased after this formality had been gone through with. The fault found with the Jesuits, outside this remarkable exception of the Province of Quebec, is generally stated to be their unbridled desire to see the bishops at the head

of Catholic education and of its controlling boards. Howbeit I should like to be enlightened all the same as to the meaning of the seventh paragraph.

By title of conquest in general, according to the Laws of Nations, a conqueror has no right to the private properties of citizens or of authorized corporations.

VIII

" By the definitive treaty of 1763, the King of England acquired an unconditional jurisdiction over the Jesuits' estates." This proposition is either inaccurate or meaningless. If your contributor mean that he acquired the right of sovereignty, and consequently jurisdiction over the Jesuits' estates as over every other inch of the ceded colony, it did not require such a flourish of trumpets to announce this truism. If, on the contrary, he mean that the King owned the Jesuit's' estates in virtue of the treaty, as he owns the public lands, fortresses, and so on, which previously belonged to the King of France, and that he could dispose of them at his pleasure, the proposition is erroneous.

The opinion of all the great authorities on the Law of Nations is uniform on this point. There is not one discordant voice.

De Vattel. Law of Nations (Chitty) B. III, C. 13, §199. " The conqueror, who takes a town or province from his enemy cannot justly acquire over it any other rights than such as belonged to the soverign against whom he has taken up arms. War authorizes him to possess himself of what belongs to his enemy; if he deprives him of the sovereignty of that town or province, he acquires it such as it is, with all its limitations and modifications."

§200. " One Sovereign makes war upon another sovereign, and not against unarmed citizens. The conqueror seizes on the possessions of the state, the public property, while private individuals are allowed to retain theirs. They suffer but indirectly by the war ; and the conquest only subjects them to a new master."

De Martens.—Droit des gens moderne de l'Europe, Vol. II, L. 8, c. 4 § 280..... " L'action du vainqueur s'exerce directement sur les biens composant le domaine de l'Etat, indirectement sur les biens des particuliers. Le vainqueur s'empare de toutes les ressources du gouvernement vaincu, de ses domaines et de leur revenus ; il perçoit les contributions publiques, quant aux biens des particuliers, la propriété immobilière n'éprouve aucun changement dans ses conditions légales."

Pinheiro-Ferreira (foot note to preceding passage of de Martens). "Les contributions dont il est permis de frapper le pays conquis n'ont pas pour but d'assurer la conservation des propriétés de tout genre ; car celle du public exceptée il n'y en a pas qui ne se trouve garantie par les principes sacrés du droit des gens, que nous avons déduits précédemment."

De Martens, Ibid. § 281. "On admet généralement, dans les usages modernes, que l'invasion et l'occupation militaire n'ont aucun effet sur la propriété des biens immeubles qui demeurent invariablement aux anciens détenteurs... La conquête et l'occupation d'un Etat par un souverain étranger n'autorisent pas ce souverain à disposer par donation ou autrement du domaine conquis ou occupé... Mais pour ceux qui font partie du domaine de l'Etat, si le vainqueur en a pris possession même temporaire, il peut en disposer."

Twiss. Law of Nations, ch. 4, § 66. "A victorious nation in acquiring the sovereignty *de facto* over a country, from which it has expelled its adversary, does not acquire any other rights than those which belonged to the expelled sovereign ; and to those such as they are with all their limitations and modifications, he succeeds by right of war."

"So, likewise, the landed and immovable property of private individuals is in general by the positive law of nations not liable to confiscation by a victorious enemy. A victorious nation, on the other hand, enters upon the public rights of the vanquished nation, and the national domain and the national treasure passes to the victor."

Kluber, Part II, title 2, § 256: "According to principles now followed in Europe, the mere loss of possession by the fortunes of war does not extinquish the rights of property..... As for property and the possession of immovable estate belonging to individuals, who have not violated the laws of war, the conquest of a country brings no change according to the modern laws of war."

Manning's (Sheldon Amos) Commentaries on the Law of Nations. (London, H. Sweet, 1875, page 116.)

"A conquering state enters upon the rights of the Sovereign of a vanquished state ; national domain and national revenues pass to the victor; but the immovable property of private individuals is, by the positive law of nations not liable to be seized by the rights of war.... it has been for many years the constant usage of European warfare, and is now firmly established as part of the European Law of Nations."

Wedderburne (Solicitor-General in 1772). Wedderburne was no friend of the Jesuits. By reading the pamphlets of the times, which,

to attain certain ends, were scattered profusely over the European continent, he became imbued with the most silly prejudices and had conceived the most erroneous opinions concerning the Society of Jesus. The principle, however, which he lays down in his report to the King on the Canadian question is perfectly sound. The report bears date of the 6th December, 1772, and in it he says :

" No other right can be founded on conquest but that of regulating the political and civil government of the country, leaving to the individuals the enjoyment of their property, and of all privileges not inconsistent with the security of the conquest." (Christie, vol. I, p. 29.)

It was afterwards in the application of this principle that he erred ; for evidently according to him the existence of the Jesuits in Canada " was inconsistent with the security of the conquest !"

On the 26th May, 1774, in the House of Commons, he further developed his thought : " You can preserve the acquisitions in time of peace, so as to give to the country subdued as much tranquillity, as much property, and as much enjoyment of that property, as is consistent with your own safety ; and this it is your duty to do. The principles of humanity, the principles of natural justice demand this at our hands, as a recompense for the evils of war ; and not that we should aggravate those evils by a total subversion of all those particular forms and habits, to which the conquered party have been for ages attached. Upon this principle, sir, I do maintain, that it would have been most unjust to have relapsed into the barbarity of former ages ; and this we should have done, if we had, with a rough stroke, said to the Canadians that the laws of Canada should be totally obliterated ; that the rights, civil and ecclesiastical, of that country, should be framed according to those of England, as being better for that people than their own." Cavendish—Debates of the House of Commons in 1774, pages 51, 52.

Thurlow (Attorney-General) was a different sort of man, with broad views and a well balanced mind. His principles were as sound as those of Wedderburne. Being consistent he was not afraid to face them in their logical conclusions. On the 22nd January, 1773, his report on Canadian affairs was handed in to His Majesty. In it he rehearses the different opinions of jurists and endorses the following : " They understand the right acquired by conquest, to be merely the right of empire, but not to extend beyond that, to the liberty and property of individuals, from which they draw this consequence, that no change ought to be made in the former laws beyond what shall be *fairly* thought necessary to establish and secure the sovereignty of the

conqueror. This idea they think confirmed by the practice of nations and the most approved opinions." And further on: "The Canadians seem to have been strictly entitled by the *jus gentium* to their property, as they possessed it upon capitulation and treaty of peace, together with all its qualities and incidents, by tenure or otherwise; for both which they were to expect Your Majesty's gracious protection.

"It seems a necessary consequence that all those laws by which that property was created, defined, and secured must be continued to them." (Christie vol. I, pages 53 and 59.)

In his speech in the Commons on the 26th May, 1774, he clearly defines his opinion on the rights of conquest. "Now, sir, a proclamation (7 October, 1763), conceived in this general form, and applied to countries the most distant, not in situation only, but in history, character and constitution, from each other, will scarcely, I believe, be considered as a very well studied act of State, but as necessary immediately after the conquest. But, however proper that might be with respect to new parts of such acquisitions as were not peopled before, yet, if it is to be considered as creating an English constitution; if it is to be considered as importing English laws into a country already settled, and habitually governed by other laws, I take it to be an act of the grossest and absurdest and cruellest tyranny, that a conquering nation ever practised over a conquered country. Look back, sir, to every page of history, and I defy you to produce a single instance, in which a conqueror went to take away from a conquered province, by one rough stroke, the whole of their constitution, the whole of their laws under which they lived, and to impose a new idea of right and wrong, of which they could not discern the means or the end, but would find themselves at a loss and be at an expense greater than individuals could afford, in order to inform themselves whether they were right or wrong. This was a sort of cruelty, which I believe was never practised, and never ought to be. My notion, with regard to this matter, I will venture to throw out as crude and general. To enter into the subject fully would require more discussion than the nature of such a debate as this will admit of. My notion is, that it is a change of sovereignty. You acquired a new country; you acquired a new people; but you do not state the right of conquest as giving you a right to goods and chattels. That would be slavery and extreme misery. In order to make the acquisition either available or secure, this seems to be the line that ought to be followed: you ought to change those laws only which relate to the French sovereignty, and in their place substitute laws which should relate to the new sovereign; but with respect to all other laws, all

other customs and institutions whatever, which are indifferent to the state of subjects and sovereign, humanity, justice and wisdom equally advise you to leave them to the people just as they were." (Debates, etc., 1774, page 29, 30.)

"If the English laws would be a prejudice to the Canadians it would be absurd tyranny and barbarity to carry over all the laws of this country, by which they would lose the comfort of their property, and in some cases the possession of it." (Debates, etc., 1774, page 32.) He had in view especially the penal laws.

Much more might be given in the same strain from these authorities, but there must be an end to all things. Now no other conclusion can possibly be arrived at, from the foregoing extracts, save that by the rights of conquest in general, that is, of any conquest not limited or qualified by treaty stipulations, the property of individuals, and the laws which create and protect it, are sacred and inviolable. That furthermore the sole measure of the extent of the conquering sovereign's rights is the extent of the rights of the conquered sovereign whom he succeeds.

What is said of the property of individuals holds good with regard to the property of bodies corporate. They exist before the law as a moral entity or person, with their rights, as to property, duely sanctioned by the sovereign.

Individuality and immortality: two essential properties of a body corporate.

(STAR, 7 *June* 1888.)

(*Continued.*)

"A corporation," says Mr. Kyd, quoted by Angell and Ames, "or body politic, or body incorporate, is a collection of many individuals united in one body under special denomination, having perpetual succession under an artificial form, and vested, by the policy of the law, with a capacity of acting, in several respects, as an individual, particularly of taking and granting property, contracting obligations, and of suing and being sued; of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence." (Treatise on the law of private corporations aggregate by Joseph K. Angell and Samuel Ames. Introduction, § 2.)

Chief Justice Marshall, in common with other authorities, holds it to be "an artificial being, invisible, intangible and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties, which the charter of its creation confers upon it either expressly, or as identical to its very existence. These are such as are supposed best calculated to effect the object for which it is created. Among the most important are immortality, and, if the expression may be allowed, individuality ; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual..... The great object of an incorporation is to bestow the character and properties of individuality on a collective and changing body of men " (Ibid, § 3).

Kyd's definition is adopted verbatim by Chitty also. (Prerogatives of the Crown, Ch. VIII, No. 2.)

The Society of Jesus in Canada was a body corporate from 1678. Its right of property was protected by the Law of Nations.

That the Society of Jesus was a body corporate under French rule is undeniable. We have alluded to the Royal Letters Patent, still extant at Quebec, as establishing this fact. Chitty in his " Prerogatives of the Crown, &c." (Ch. VIII, edit. London, 1820 pg. 122), assures us that " The exclusive right of the Crown to institute corporations and the necessity for its express or implied consent to their existence is undoubted..... The King's consent to the formation of a corporation is expressly given in the case of his granting a charter. This need not be done by any particular form of words ..... a gift of land from the King to the burgesses, citizens or commonalty, of such a place, was conceived to be sufficient to incorporate them under such collective name*..... Nor is it necessary that the charter should expresly confer those powers, without which a collective body of men cannot be a corporation, such as the power of suing and being sued, and to take and grant property ; though such powers are in general expressly given, etc., etc."

The following is an extract of the Diploma or Letters patent of Louis XIV, of May 12, 1678 :

" Louis, par la Grâce de Dieu, Roy de France et de Navarre. A tous ceux quis ces présentes lettres verront, salut.

" Nos chers et bien aimez *les Religieux de la Compagnie de Jésus résidant en nostre pays de la Nouvelle France*, nous ont fait remonstrer qu'en considération du zèle qu'ils ont tesmoigné pour la conversion

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Confr. Ibid. pg. 124.

des sauvages, nos vice-roys, lieutenants généraux et gouverneurs du dit pays, ensemble les compagnies establies pour le commerce, leur ont donné en differents temps plusieurs terres dont ils ont jouy, et sur partie desquelles ils ont fait construire les bastiments nécessaires pour leur collège, esglise, et communauté, dans la ville de Québec, les dites terres consistantes, scavoir : (here follows the enumeration of Seigneuries, etc.) Et d'autant que les dites terres, lieux, et bastiments n'ont pas été amortis, les exposants craignent d'estre troublez en la jouissance d'iceux, nous ont très humblement fait supplier qu'il nous plust les amortir, et leur permettre de les tenir en main morte et exempts de nos droits.

" A ces causes, voulant favorablement traiter les exposant, contribuer autant qu'il nous sera possible à la plus grande gloire de Dieu, et a l'établissement de la religion catholique, apostolique et romaine, dans le dit pays de Canada, et les obliger à continuer leurs prières pour notre prospérité, et santé et la conservation de cet Estat, de nostre grâce spéciale, pleine puissance, et autorité royale, nous avons agrée confirmé et amorty, agréons, confirmons et amortissons par ces présentes signées par nostre main toutes ces terres et concessions cy-dessus déclarées..... ensemble les bastiments construits sur les dites terres, sans que les supplians puissent jamais être contraints de les mettre hors de leurs mains, n'y qu'ils soient tenus pour ces dits héritages, lieux et droits, nous payer anciens devoirs et droits, donner homme vivant et mourant, faire foi et hommage, payer indemnités ou droits de francs fiefs et nouveaux acquests à nous et à nos successeurs Roys, dont nous les avons quittés et exemptés, quittons et exemptons, &c., &."

This instrument alone, without its being necessary for me to hunt up other documents, constituted the Society of Jesus a body corporate, and by granting the privilege of holding their property *in mortmain* constituted them a corporation for ever.

Therefore, as by the right of conquest in general, as laid down in the Law of Nations, the rights of property of private individuals are secured, so also are the rights of the corporation of the Society of Jesus, to these intents and purposes, holding property as an individual

The Letters patent of the French King a solemn contract of protection with the Society. Its obligations binding on the King of England who supplants him.

I go further, and say that even were the laws of nations silent on the point of the inviolabillity of private property, establishing as they do the principle that, at the conquest, the King of England succeeded the King of France, in the sovereignty of these provinces, he succeeded him not only in all his prerogatives but also in all his obligations. The letters patent are a solemn contract, guaranteeing protection to the Society of Jesus. The King of England is equally bound by them. He accepted the sovereignty of Canada with all its limitations and modifications such as it was.

A corporate body cannot be destroyed by the ruler, in virtue of his Royal prerogative alone.

Nor was the King of France, in virtue of his Royal prerogative alone empowered to destroy a corporation he had once sanctioned, and to deprive it of its franchisc.

Here are the principles accepted by jurists who treat of this matter.

" In its more extensive sense the term 'franchise' signifies every description of po itical right which a freeman may enjoy and exercise. Being derived from the Crown, these franchises can in general only arise and be claimed by royal grant or by prescription which supposes it. They may be vested either in natural persons or bodies politic, in one man or in many. But the same identical franchise that has been before granted to one cannot be granted to another, for that would prejudice the former grant. It is a clear principle that the King cannot by his mere prerogative diminish or destroy immunities once conferred and vested in a subject by royal grant." (Chitty, on the Prerogatives of the Crown, Ch. VIII, No. 1, pg. 119).

" It is admitted on all hands, that the charter by which a body is incorporated must be accepted as it is offered..... that they may reject a new charter *in toto* is indubitable; because the King cannot take away, abridge or alter any liberties or privileges granted by him or his predecessor, without the consent of the individuals holding them." (Ibid. No. 2, pg. 125).

" It is a principle in law that the King is bound by his own or his ancestors' grants, and cannot therefore, by his mere prerogative take

away vested immunities and privileges. But a corporation may be dissolved by surrendering its franchise into the hands of the King, though legal dissolution is not occasioned thereby, and the charter operates till the surrender be enrolled, because the king can take nothing but by matter of record without enrolment. (Ibid, pg. 132).

Documentary evidence of the exercise of corporate rights by the Society of Jesus down to the very year of the capitulation of Quebec.

I may be asked if, in point of fact, the Jesuits exercised their franchise as a corporation down to the very period of the conquest? In answer I may state: Quebec capitulated on the 18th September, 1759, and I have lying before me at the present writting an original document dated the 30th March, of that same year. It bears the signature of the Superior of the Society in Canada, that of his procurator and the seal of the corporation. This instrument appoints the Sieur Mathieu Hianveu as assistant notary for their Seigneuries of Notre Dame des Anges, St. Gabriel, Sillery and Bélair, and enjoins on Paul Antoine François La Nouillet, *juge prévot*, to see that Sieur Hianveu be duly qualified and sworn into office. Therefore, down to the conquest they remained a corporate body, which the King of England, neither by his own prerogative, nor by that of the King of France was empowered to destroy.

By title of the conquest of Canada in particular the right of the Jesuits to their property was unassailable.

If the case in favor of the Jesuits be already so strong, supported by the laws of nations, defining the rights of conquest in general, it gains a hundred fold when we come to deal with the inviolability of their property as guaranteed by the capitulations and treaty.

I shall quote here mainly from English authorities, as the question, if not a domestic one, is one I would not like to have settled by the opinion of foreigners, lest they be deemed partial.

Let me first set before the eyes of your readers extracts from the capitulations and the treaty which have some bearing on the question. I have not at hand the English version of the Capitulation of Quebec, so I am obliged to quote from the French.

Capitulation de Québec (18 Sept. 1759) : Art II. Que les habitants soient conservés dans la possession de leurs maisons, biens, effets et privilèges.—Accordé en mettant bas les armes.

Art. VI. Que l'exercise de la Religion Catholique, Apostolique et Romaine, sera conservé, que l'on donnera des sauves-gardes aux maisons ecclésiastiques et religieuses, particulièrement à Monseigneur l'Evêque de Québec, etc., etc.—Libre exercise à la Religion romaine· sauves-gardes à toutes personnes, religieuses, ainsi qu'à Monseigneur l'Evêque, qui pourra venir exercer librement et avec décence, les fonc, tions de son état, lorsqu'il le jugera à propos, jusqu'à ce que la possession du Canada ait été décidée entre Sa Majesté Britannique et Sa Majesté Très-Chrétienne.

Capitulation of Montreal (and of the whole province, 8th Sept. 1766). "Art. XXVII. The free exercise of the Catholic, Apostolic and Roman religion shall subsist entire, etc., etc.

Answer.—"Granted as to the free exercise of their religion. The obligation of paying tithes to the priests will depend on the King's pleasure.

"Art. XXXII. The communities of nuns shall be preserved in their constitution and privileges. They shall be exempted from lodging any military, and it shall be forbid to trouble them in their religious exercises, or to enter their monasteries; safe-guards shall even be given them if they desire them.

"Answer.—Granted.

"Art. XXXIII. The preceding article shall likewise be executed with regard to the communities of Jesuits and Recollets, and to the house of the priests of St. Sulpice at Montreal. This last, and the Jesuits, shall preserve their right to nominate to certain curacies and missions, as heretofore.

"Answer.—Refused till the King's pleasure be known.

"Art. XXXIV. All the communities, and all the priests shall preserve their movables, the property and revenues of the Signiories and other estates which they possess in the colony of what nature soever they be, and the same estates shall be preserved in their privileges, rights, honors and exemptions.

"Answer.—Granted.

"Art. XXXV. If the canons, priests missionaries, the priests of the Seminary of the foreign missions, and of St. Sulpice, as well as the Jesuits and the Recollets, choose to go to France, passage shall be granted them in his Britannic Majesty's ships, and they shall all have leave to sell, in whole or in part, the estates and movables which they

possess in the colonies, either to the French or to the English, without the least hindrance or obstacle from the British Government.

(STAR, *8th June* 1888.)

(*Continued.*)

" They may take with or send to France the produce of what nature soever it be of the said goods sold, paying the freight as mentioned in the 26th article. And such of the said priests who choose to go this year shall be victualled during the passage at the expense of His Britannic Majesty, and shall take with them their baggage.

" Answer—They shall be masters to dispose of their estates, and to send the produce thereof, as well as their persons and all that belongs to them, to France.

" Art. XXXVII. Lords of manors (les seigneurs de terre), military and civil officers, etc., etc., shall preserve the entire peaceable property and possession of their goods, movable and immovable, merchandize, etc., shall keep and sell them as well to the French as English; to take away produce of them..... whenever they shall judge proper to go to France, paying freight as in the 26th article.

" Answer—Granted, as in the 26th article.

" Art. XLVI. Inhabitants and merchants to enjoy all the privileges granted to subjects of His Britannic Majesty.

" Answer—Granted.

" Art. L. The present capitulation shall be inviolably executed in all its articles, and bona fide on both sides, notwithstanding any infraction and any other pretext, with regard to preceding capitulations, and without power to make reprisals.

" Answer—Granted."

TREATY OF PEACE.—" His Britannic Majesty, on his side, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada. He will consequently give the most effectual order, that his new Roman Catholic subjects may profess the worship of their religion according to the rights of the Roman Church, as far as the laws of Great Britain permit."

" His Britannic Majesty also agrees, that the French inhabitants, or others, who had been the subjects of the most Christian King in Canada, may retire with all safety and freedom, wherever they shall think proper, and may sell their estates, provided it be to subjects of His Britannic Majesty, and bring away their effects as well as their persons, without being restrained in their emigration, under any pre-

tence whatsoever, except that of debts or of criminal prosecution ; the term limited for this emigration shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratification of the present treaty."

I shall be as concise as the subject will allow in reasoning on the text of the foregoing documents.

In the 2nd Art. of the capitulation of Quebec "The inhabitants (no exception whatever being made detrimental to the rights of the Jesuits to their property) are to be preserved in possession of their houses, goods, effects and privileges."

In the 32nd, 33rd and 34th Art. of the capitulation of Montreal, and of the whole province, communities are mentioned three times. In the two foremost articles, certain privileges are granted and refused to certain specified communities. In the last mentioned article certain privileges are secured to all the communities alike, in contradistinction to what was refused and granted in the two preceding articles. In other words, all communities and all the priests shall preserve their movables, the property and revenues of the Seigniories, and other estates which they possess in the colony of what nature soever they be, etc. The Jesuits forming a community and being priests, and not being *de facto* formally excluded (which they could not be *de jure* according to the laws of nations), are entitled to the full benefit of this article.

What was refused with a proviso in the XXXIII Article of the Capitulation of Montreal ? Interpretation of treaty stipulations.

Your contributor will no doubt say that Art. 33 refuses them certain privileges till the king's pleasure be known. I shall not ask here, after what I have already said, what right Amherst had to refuse any one of the points mentioned. But I maintain that the refusal, with its proviso, falls upon the latter part of the 33rd article.

That the refusal fell upon the last clause is certain. For Burton, the Lt.-Governor of Three Rivers, wrote to Amherst, but two months after the capitulation, the 19th of November, to complain that F. de Glapion had ordered Roubaud, who had disgraced himself with the Indians of St. François, to make room for a more worthy successor, "without," Amherst says, "having given the least notice. As soon as I heard of it I put a stop to it, looking on it as a breach of the 33rd

and 40th Art. of capitulation" (See Canadian Archives (Ottawa) B, 21—1 p. 33.)

The XL Art. closes thus :... "The actual vicars-general, and the bishop, when the Episcopal See shall be filled, shall have leave to send them (the Indians) new missionaries when they shall judge it necessary."

"Answer—Granted, except the last article which has been already refused."

The refusal did not fall upon the first part of Art. 33, if it must be distorted so as to mean that the Jesuits could not continue to hold their estates (which interpretation would be indeed overstrained) for the reason that after the 34th Art. Amherst simply wrote "Granted," whilst if the above interpretation is to be maintained he should have written : "Granted, except for the Jesuit community, holding their estates, which was already refused in the 33rd Act."

Now putting the thing *at its worst*, what, according to the canons laid down for the interpretation of treaties, was refused with a proviso in the 33rd art. ?

Grotius gives this canon : "Voici encore une règle qui est fréquemment d'usage dans l'interprétation des Traités de Paix. Toutes les fois qu'on se rapporte sur certains articles, à quelque article précédent, ou à quelque ancien Traité, auquel on renvoie, toutes les qualités ou les conditions exprimées dans l'article précédent ou dans l'ancien Traité, sont censées répétées comme devant avoir lieu dans celui dont il s'agit" (*Grotius*, livre II, ch. XX, § XXIV, No. 1.) We have simply to repeat the Art. 32 adapting it to the Jesuits, etc. "The communities of Jesuits, Recollets and Sulpicians shall not be preserved in their constitution and privileges (*the holding of property is a right*). They shall not continue to observe their rules. They shall not be exempted from lodging any military, and it shall not be forbid to trouble them in their religious exercises, or to enter their monasteries ; safeguards shall not be given them when they desire it. The Sulpicians and the Jesuits shall not preserve their right to nominate to certain curacies and missions as hetofore." Though the whole of this in its complex is palpably absurd, as the refusal may fall on one clause only, no mention is made in it of their not being preserved in the peaceable possession of their estates.

I said, taking the thing at its worst, which the conquered are certainly not obliged nor the conqueror allowed to do.

"Lorsqu'il y a quelque chose de douteux et d'ambigu dans une clause l'interprétation doit se faire plutôt au préjudice qu'à l'avantage de celui qui a lui-même prescrit les conditions du Traite. (Note) C'est

le maxime que posait autrefois Hannibal : Est quidem ejus qui dat, non qui petit, conditiones dicere pacis. C'est-à dire, pour l'ordinaire, du plus puissant, de même que les articles d'un contrat de vente s'expliquent au préjudice du vendeur. (Note) Cela est décidé par le Droit Romain : Veteribus placet, pactionem obscuram, vel ambiguam venditori et qui locavit, nocere ; in quorum fuit potestate legem apertius conscribere. En effet il pouvait l'expliquer plus clairement, s'il ne l'a pas fait, tant pis pour lui. L'autre était en droit d'interpréter à son avantage des termes et des expressions susceptibles de plusieurs sens. On peut rapporter ici ce que dit Aristotle : Qu'en matière d'amitiés contractées par un principe d'intérêt, l'utilité de celui qui reçoit est la mesure de ce qui est dû." (Grotius, Liv, II, ch. XX, § 26).

De Vattel, is equally emphatic in the rule he gives : " In case-of doubt, the interpretation goes against him who prescribed the terms of the treaty, for as it was in some measure dictated by him, it was his own fault if he neglected to express himself more clearly, and by extending or restricting the signification of the expressions to that meaning which is least favorable to him, we either do him no injury, or we only do him that to which he has wilfully exposed himself ; whereas, by adoptiug a contrary mode of interpretation, we would incur the risk of converting vague or ambiguous terms into so many snares to entrap the weaker party in the contract, who has been obliged to subscribe to what the stronger had dictated." (Chitty's *de Vattel*, Law of Nations, B. IV. Ch. III, § 32.)

" Articles of a treaty stand sometimes in need of interpretation ; in which case the rule we have already given elsewhere must be first observed To wit, the more favourable the thing is the more should the meaning of the terms be extended ; on the contrary the less favourable the more should the sense be restricted. Considering mere Natural Law, there is nothing more favourable than that which tends to secure to each one his own, or what he has a right to. Thus ambiguous clauses should be explained after this fashion : that he whose cause is just, should lose nothing, etc." (Grotius B. II, ch. XX. § 11. N. 1, 2.)

Of course I do not expect that there will be any quibbling concerning the term treaty in the foregoing quotations, as we are here discussing a capitulation. They are certainly not identical in every case, but are so taken in the matter under consideration. It is evident from the following :

" It is very certain, that, in order to discover the true meaning of the contract, attention ought principally to be paid to the words of the promising party. For he voluntarily binds himself by his words ; and

we take for true against him what he has sufficiently declared. This question seems to have originated from the manner in which conventions are sometimes made : the one party offers the conditions, and the other accepts them ; that is to say, the former proposes and he requires that the other shall oblige himself to perform, and the latter declares the obligation into which he really enters. If the words of him who accepts the conditions bear relation to the words of him who offers them, it is certainly true that we ought to lay our principal stress on the expressions of the latter, but this is because the person promising is considered as merely repeating them in order to form his promise. The capitulations of besieged towns may here serve us for an example. The besieged party proposes the conditions on which he is willing to surrender the place ; the besieger accepts them, the expressions of the former lay no obligation on the latter, unless so far as he adopts them. He who accepts the conditions is in reality the promising party ; and it is in his words that we ought to seek for the true meaning of the articles, whether he has himself chosen and formed his expressions, or adopted those of the other party, by referring to them in his promise. But we still must bear in mind the maxim above laid down, viz., that what he has sufficiently declared is to be taken as true against him." (Chitty's de Vattel, B. II. ch. XVII, § 267.)

This shows that what I have said is applicable indiscriminately to treaties and to capitulations, and, moreover, further confirms my point ; for what the beseiger has sufficiently, nay very distinctly declared in the 34th art., I take to be true against him, viz., that with all other communities the Jesuits were to preserve the property and revenues of the Seigniories and other estates, etc., and we conclude with de Vattel that : " We ought to interpret his obscure or equivocal expressions in such a manner that they may agree with those clear and unequivocal terms which he has elsewhere used, either in the same deed or on some other similar occasion." (Ibid. B. II. ch. XVII,§ 284).

To my mind the meaning has always been perfectly clear, and if I have gone into these considerations it is rather out of deference for a preconceived notion, that as the estates were taken by the Government, the capitulations or treaty must in some way have sanctioned the seizure.

I would say that Amherst, a blunt soldier, knew and cared very little about the constitution and rules of the Jesuits, nor was he man to wish uselessly to molest them in their religious exercises. But he needed barracks for his troops, and he with others, fondly entertained the hope, which events proved to be delusive, of seeing the realization of a pet plan of the Government, that of supplanting the bishops or other

ecclesiastical authorities in the appointment to benefices. This was all he wished to secure in his conditional refusal of the 33rd article.

English Authorities on the rights of Religious Orders in Canada to their property as secured by treaty.

These are my own personal conclusions from the canons concerning the interpretation of treaties; but I promised to quote our own English authorities on what was and what was not stipulated in the same capitulations and subsequent definitive treaty. And in this I want my purpose to be clearly understood, for I maintain *that even had the King of England the power, by his mere prerogative, on the occasion of the Conquest, to confiscate the Jesuits' estate,* which he had not, *he clearly yeilded that power through is general and plenipotentiary.*

THURLOW.—(Report to His Majesty, 22 January, 1773.) "On the eighth of September, 1760, the country capitulated in terms which gave to Your Majesty all that belonged to the French King; and preserved all their property, real, and personal, in the fullest extent, not only to private individuals, but to the corporation of the West India Company, and to the missionaries, priests, canons, convents, etc., with liberty to dispose of it by sale if they should want to leave the country. The free exercise of their religion by the laity, and of their function by their clergy, was also reserved."

(*To be Continued*)

(STAR, 9 *June* 1888.)

(*Continuea.*)

"The whole of these terms were stipulated on the 10th of February, 1763, in the definitive of peace, etc." (Christie, Vol. I. pg. 48).

Again: ".....and if this general title" (rights of conquest as determined by the Law of Nations) to such moderation could be doubted, they" (the jurists whose opinion he endorsed) "look upon it to be a necessary consequence of the capitulation and treaty alluded to before, by which a large grant was made to them of their property and personal liberty, which seem to draw after them the laws by which they were created, defined and protected, and which contain all the idea they have of either." (Ibid. pg. 53).

Though I am fully alive to the fact that this communication is already voluminous and the quotations copious, I cannot pass over in lisence the closing passage of his report:

"Although the foregoing observations should be thought just, as a general idea, yet circumstances may be supposed, under which it would admit some exceptions and qualifications. The conqueror succeeded to the sovereignty in a title at least as full and as strong, as the conquered can set up to their private rights and ancient usages.

"Hence would follow every change in the form of Government which the conqueror should think *essentially necessary* to establish his sovereign authority and assure the obedience of his subjects. This might possibly produce some alteration in the laws, especially those which relate to crimes against the state, religion, revenue and other articles of police, and in the form of magistracy.

"But it would also follow that such a change should not be make without some actual and urgent necessity, which real wisdom could not overlook or neglect; not that idea necessity which ingenious speculation may always create by possible supposition, remote inference and forced argument: not that necessity of assimilating a conquered country, in the article of laws and Government to the metropolitan state, or to the older provinces which other accidents attached to the empire, for the sake of creating a harmony and uniformity in the several parts of the empire, unattainable and, as I think, useless if it could be attained; not the necessity of stripping from the lawyer's argument all ressort to the learned decisions of the Parliament of Paris, for fear of keeping up the historical idea of the origin of their laws: not the necessity of gratifying the unprincipled and impracticable expectations of those few among your Majesty's subjects who may accidentally resort thither, and expect, to find all the different laws of the different places from which they come; nor according to my simple judgment, any species of necessity which I have heard urged for abolishing the laws and government of Canada." (Ibid. pg. 61.)

Here are the broad views and sound principles of the man, whose erudition and manliness raised him later on to the peerage. In June 1778, he succeeded Lord Apsley as lord high chancellor of England.

His report is the outcome of reflection and research. In it the warmth of his expressions is tempered by the thought that he is addressing his Sovereign. But if we wish to measure the depth of his convictions, we must listen to him on the floor of the House, endeavouring to safeguard the honour of England and the inviolability of treaty stipulations.

"When it (Canada) was taken, gentlemen will be so good as to recollect upon what terms it was taken. Not only all the French who resided there had eighteen months to remove with all their moveable effects, and such as they could not remove they were enabled to sell,

but it was expressly stipulated that every Canadian should have the full enjoyment of all his property, *particularly the religious orders of the Canadians*, and that the free exercise of the Roman Catholic religion should be continued. And the definitive treaty of peace, if you examine it as far as it relates to Canada, by the cession of the late King of France to the Crown of Great Britain, was made in favour of property ; made in favour of religion ; *made in favour of the several religious orders*." (Cavendish—Debates, etc., 1774, pgs. 27, 28.)

There is a true ring of conviction in these words, and no room for doubt or hesitancy ; yet in them is embodied the legal opinion of the highest authority on these matters in England at the time in which they were uttered. And how can he speak so positively of the treaty, as confirmatory of the capitulation, since the divers articles of the latter are not rehearsed in full, and the good pleasure of the King has apparently not been made known as to several of the articles ? The King's silence is rightly interpreted to mean that he can take no exception to one who signed, in his name, without overstepping his powers, articles of capitulation which become then inviolable. Things remain as they were, if in provisions, as to his assent, he remains silent ; in which case, the general maxim finds its application : *melior est conditio possidentis*.

However, this right of possession is indirectly confirmed by the treaty, when for the Jesuits and others, it was made facultative or optional to sell their estates. They were not of course obliged to do so, but *de facto* the Society of Jesus, on the 5th May 1764, sold 172 arpents, a large portion of St. Lawrence Ward in Montréal, to Sieur Plessis Belair (See *Terrier des Seigneurs de Montréal*, at that date), and this sale was effected with due authorization. "Vente par le Supérieur des Jésuites de la mission de Montréal, autorisée par acte de justice à Charles Plessis Belair 1° d'une terre, etc." (See Canadian Archives, Ottawa, Series Q. Vol. 50 A. pg. 188).

Another contract of donation was passed by the Jesuits in favour of the Ursulines of Quebec as late as the 24th April, 1788. (See report 1824, page 123.)

In the report of two commissioners of the nine appointed to ascertain, among other points, what portion of the Jesuits' estates the King might in justice grant to Lord Amherst, and as rehearsed in the report of Alexander Gray and J. Williams, it is said : "Ils (les commissaires) observent aussi qu'il est de notoriété publique que par différents jugements des cours de justice en cette Province ils (les Jésuites) ont été maintenus dans leurs droits, et qu'à leur connaissance ils continuent à posséder toutes les dites terres, à l'exception d'une partie du Collège

de Québec, maintenant occupé comme magasin des provisions du Roi, et comme casernes pour une partie de la garnison." (Rap. 1824, p. 93.)

Nor can your contributor derive much consolation from the clause in the treaty, even if it would affect the matter in hand, and which provides for the execution of the terms of the treaty "as far as the laws of Great Britain permit."

Lord North, the then premier, effectually disposed of that objection in his speech in the House of Commons on the 26th May, 1774: "It has been the opinion of very many able lawyers, that the best way to establish the happiness of the inhabitants is to give them their own laws, as far as relates to their own possessions. Their possessions were marked out to them at the time of the treaty; to give them those possessions without giving them laws to maintain those possessions would not be very wise.....As to the free exercise of their religion, it likewise is no more than what is confirmed to them by treaty, as far as the laws of Great Britain can confirm it. Now, there is no doubt that the laws of Great Britain do permit the very full and free exercise of any religion, different from that of the Church of England, in any of the colonies; therefore, I apprehend, that we ought not to extend them to Canada." (See Debates 1774, pg. 11 and 12. Confr. also page 63.)

As final conclusion of this point we repeat that it would be inaccurate to say, putting it very mildly, that by the "definitive treaty" of 1763 the King of England acquired absolute and unconditional jurisdiction over the Jesuits' estates otherwise understood than that he acquired sovereignty.

Proof that the Crown inhibited the Jesuits from receiving new members. Consequently the title of the Province to the estates by escheat untenable.

IX

"A vacant estate becomes the property of the Crown. Hence by escheat of the property on the death of the last survivor, in 1800, the Crown became absolute owner of the property."

As we have already made good, on the best legal authority, that it is not within the mere prerogative of the Crown to diminish or destroy immunities once conferred on corporations, nor take away, abridge, nor alter any liberties or privileges granted by him or his predecessors (Jos. Chitty, Prerogatives of the Crown, ch. 8. Edit. Lond., 1820, p.

119, 125, 132); and as the Society of Jesus was a recognized body corporate, as previously proven, the action of the Imperial authorities in preventing the accession of new members was ultra vires and wholly unwarrantable. Any subsequent advantage accruing to the Crown from such and illegal proceeding is invalid in law.

It remains simply to show that such was the case. As a matter of fact, it is a historical certainty that after the conquest no new members were received into the Society ef Jesus. That this was the result of an inhibition on the part of the Crown is proven by the two following documents.

On the 15th Nov. 1772, Mgr. Briand, bishop of Quebec, in reference to the Jesuits, thus wrote to Cardinal Castelli: "The English have not molested them (the Jesuits) in Canada and together with the Recollets, they here serve the church with great edification. But neither the former nor the latter have leave to receive new subjects. I have asked that permission of the King of Great Britain, in an address signed by the clergy and the people. I fear much that I shall not obtain it, for two years have already gone by and I have received no answer." (Archives de L'Archevéché, Québec.) The prohibition was renewed later on in 1791.

In the Royal Instructions of the 16th Sept. of that year the following passage occurs: "It is also Our will and pleasure that all other religious seminaires and communities (that of the Jesuits only excepted) do for the present and until we can be more fully informed of the true state of them, and how far they are or are not essential to the free exercise of the religion of the Church of Rome, as allowed within our said province, remain upon their present establishments. *But you are not to allow the admission of any new members* into any of the said societies (the religious communities of women only excepted) without our express orders, for that purpose. (Chisholm's Papers p. 150—Lib. of Parliament, E. No. 421.) The Crown in consequence did not in right, through *escheat*, become owner of the property at the death of Père Casot.

The Quebec Act, inasmuch as it restricts treaty stipulations, is ultra vires. It in no wise affects vested rights; hence inapplicable to the case.

X.

"No ecclesiastical order has any right or title to the property since 1774."

A right may be either legal or legitimate. Laws may be framed which invade the rights of a private citizen or corporation so as forcibly to dispossess them of their rightful property, and may be carried into effect in spite of all remonstrance. His or its title ceases to be *legal*, as it is ignored by the unjust law, but it does not cease to be *legitimate*, as it is based on justice.

The act 14 George III, ch. 83, otherwise the "Quebec act," is a striking instance of this. It was passed in 1774, and in its Art. VIII it decrees : "It is also established by the authority aforesaid that all the Canadian subjects of His Majesty in the said Province of Quebec (religious orders and communities alone excepted) may also preserve their properties and possessions, etc., etc."

But as I have clearly proven that the Jesuits by the laws of nations, by the capitulations and by the treaty, had a full right in justice to their property and estates, the 8th article of this act is frustrated by its third, which I give in French, as I have not at hand the English version :

"Pourvu aussi, et il est établi, que rien de ce qui est contenu dans cet acte ne s'étendra, ou s'entendra s'étendre à annuler, changer ou altérer aucuns droits, titres ou possessions, résultans de quelque concession, actes de cession, ou d'autres que ce soit, d'aucunes terres dans la dite province, ou provinces y joignantes, et que les dits titres resteront en force, et auront le même effect, comme si cet acte n'eut jamais été fait."

So that, as far as concerns the rights of the Jesuits, we are authorized to look upon this act as if it never existed, or at least as *inapplicable.*

But it is morever *ultra vires*, if it mean that the Jesuits are not to be preserved in their property ; for a statute cannot annul a treaty. Chief Justice Jay, a most eminent jurist, in the celebrated case of Henfield, tried in the city of Richmond, on the 22nd May, 1793, observed : "Treaties between independent nations are contracts or bargains which derive all their force and obligations from mutual consent and agreement and consequently, when once fairly made and properly concluded, cannot be altered or annulled by one of the parties without the consent and concurrence of the other. Wide is the difference between *treaties* and *statutes*—we may negotiate and make contracts with other nations, but we can neither legislate for them nor they for us to vacate or modify treaties at discretion. Treaties, therefore, necessarily become the *supreme law of the land.* The peace, prosperity and reputation of the United States will always greatly depend on their fidelity to their engagements, and every virtuous citizen (for every citizen is a party to them) will concur in observing

and executing them with honor and good faith, and that whether they be made with nations, respectable and important, or with nations weak and inconsiderable, our obligation to keep our faith results from our having pledged it and not from the character or description of the state or people to whom neither impunity nor the right of retaliation can sanctify perfidy, for although perfidy may deserve chastisement, yet it can never merit imitation."

If, therefore, the act of Quebec is to be read as a step towards the gradual absorption to the Jesuits' estates, it is a clear case of infringement of treaty stipulations, and as De Vattel said : " The following rule is better calculated..... at once to cut short all chicanery. If he who could and ought to have explained himself clearly and fully has not done it, it is the worse for him. He cannot be allowed to introduce *subsequent restrictions* which he has not expressed..... The equity of this rule is glaringly obvious, and its necessity is not less evident." (Chitty's *De Vattel.* B. II. ch. XVII., § 264.)

In answering this assertion, No. 10, I prescind entirely from the known maxims of Canon Law, with regard to the church property.

The status of the Jesuits in France in the 16th and 17th centuries is beside the question : the Jesuits being a body corporate in Canada. The title to their property was never vested in the General.

XI

" The Jesuits in France, in the 16th and 17th centuries, had no legal title to property. All the title existing was vested in the General at Rome."

The first part of this article I have shown to be fallacious. The second is a thread-bare objection. It is based on a copy of an " Arrêt du Parlement de Paris," which latter was annexed to a letter addressed to the Attorney and Sollicitor-General, Norton and DeGrey. The letter bears date May 12th 1765, and was written by the famous (?) James Marriot, a man as bitter in his blind hostility to the Society of Jesus as he was friendly to Voltaire.

Both documents are to be found in the report of the Committee of the House of Assembly of Lower Canada concerning education, dated the 25th February, 1824. In the French version they are reproduced at pages 205 and 211 respectively. It lies with you, Mr. Editor, to determine whether you can spare sufficient space in your paper for a disquisition on them. I am ready to undertake it, as I court enquiry, and shall evade no objection proposed.

A DIVERSION.

(Star, *June* 13, 1888.)

The Jesuit Property.

In reply to the courteous and ingenious arguments of U. E. L., we consider it useless to discuss side issues, which are totally irrelevant. U. E. L. admits that the property in question was confiscated by the Imperial Government. This disposes of the question of the liability of the Provincial Government. He argues however that the Provincial Treasurer is bound to restore "ill gotten gains." If this principle is to be admitted, all the revenue derived from licenses to sell liquor ought to be applied to relieving the families impoverished by inebriety.

That the Company of Jesuits was an illegal organization, U. E. L. can easily satisfy himself by a reference to his Blackstone under the title "Mortmain" or the memorial of Mariott in favor of Lord Amherst's pretensions in 1787. In case U. E. L. is dissatisfied with or does not admit the British Law, let him refer to *Guyot, Répertoire de Jurisprudence, Vbo. Jésuites.* He will find that in France the Jesuits were allowed (in 1561) letters patent "*à la charge que l'évêque diocésain aurait sur eux toute surintendance, juridiction et correction:*" We infer from this that when the order was suppressed the property reverted to the bishops.

In 1761 the celebrated Père Lavallette became a bankrupt. The creditors sued the Society of Jesus. The Jesuits defended the action. The Parliament of Paris, struck with the immense commercial enterprises of the Society, under the assumed name of Father Lavallette, took this opportunity of examining the constitutions of the order. Their examination resulted in the celebrated *arrêt* of 6th August, 1762.

This *arrêt* declares this religious order inadmissible by its nature in any civilized community ("*tout état policé*"), as contrary to natural law, menacing (*attentatoire*) all authority spiritual and temporal, and tending to introduce into church and state a political body, the essence of which consists in a continual activity to become by every means, first to secure absolute independence, and eventually to usurp all authority.

The *arret* further goes on to say that there are abuses in the vows

and oaths, and declares them null, and orders that all the members of the said society who are 33 years of age cannot claim any rights of succession ; enjoins all the members of the society to abandon their colleges, and prohibits them in the future from observing the rules of the order and its constitutions, enjoins them also to take the oath of allegiance to the Gallican Church, and to abandon all correspondence with the General of the order. The Parliament of Rouen in November, 1764, had passed a similar order. In the month of November, 1764, an edict was passed and enregistered in all the "Parlements," dissolving completely the order of Jesuits in France. The greater number of the states of Europe imitated this example. The King of France by an edict of May, 1777, provides, Art. 2, that they (the Jesuits) "shall never live together in company, under any pretext soever." Article 7 restores the Jesuits under 33 years of age to complete civil rights, thereby cancelling their religious vow. Under this edict the Jesuit disappears completely as an order, and merges into the religious orders authorized by law, after pledging themselves to maintain and profess the liberties of the Gallican church. The Company of Jesuits was now completely dead and extinct as a legal order in France.

The following extract from the "Encyclopedia Britannica" 9th edition *verbo* Jesuits is also interesting :.

"On July 21st, 1773, the famous Brief *Dominus ac Redemptor* appeared, suppressing the Society of Jesus. This remarkable document opens by citing a long series of precedents for the suppression of orders by the Holy See, amongst which occurs the ill-omened instance of the Templars. It then briefly sketches the objects and history of the Jesuits themselves. It speaks of their defiance of their own constitution expressly revived by Paul V, forbidding them from meddling in politics ; of the great ruin to souls caused by their quarrels with local ordinaries and the other religious orders, their conformity to heathen usages in the east and the disturbances, resulting in persecutions of the Church, which they had stirred up even in Catholic countries, so that several Popes had been obliged to punish them. Seeing then that Catholic Sovereigns had been forced to expel them, that many bishops demand their extinction, etc." The Pope concludes by suppressing and extinguishing the order of Jesuits forever.

In 1814 the Pope restored the society to corporate existence. Napoleon compelled the Jesuits to quit France in 1804. They reappeared in France in 1814, obtained a formal license in 1822, were dispersed in 1830, and finally expelled under the Ferry laws of 1880. In 1874 while the bishops were agitating at Quebec the subject of a

restitution of the Jesuits' estates, a memorial edited by "A Jesuit" was circulated amongst the members. At page 96 of this little book the following clause occurs: "The Jesuits in 1773 having been suppressed, the government acquired no right to their property, etc." The writer goes on to say that the bishops of that day should have claimed the property, which they did not. He maintains that under the cannon law the property of the suppressed order reverted to the church at large. There is no claim put forth for the Jesuits. Nor is it pretended that the confiscation of their estates was illegal. If U. E. L. will refer to a petition of the Roman Catholic Bishops to the Legislature under the date January, 1845, he will find that they recognised the fact that these funds were to be devoted to the purposes of superior education, inasmuch as they offered to bind themselves, if the funds were restored to them, to found one or more establishments for superior education. This petition was signed by the bishops and coadjutors of Quebec, Kingston and Montreal, and the bishops of Toronto.

There is also on record a letter dated 17th Oct., 1878, signed by F. G. Marchand, Provincial Secretary, and ordered to be sent to the Archbishop of Quebec, in which the following sentence occurs:

"They (the advisers of the Lieut.-Gov.) have informed His Honor that the land of the Jesuits' College was ceded to the province by the Dominion Government, who received it from the Imperial Government, and they have concluded that it was to the latter government the protest of the bishops was addressed. They therefore have advised His Honor to transmit the letter of the bishops to the Federal Government for communication to the Imperial Government."

Our statement of facts was written with the intention of showing that there was no legal claim of the Company of Jesuits to this fund. If any such claim existed, it could only be in favor of the bishops as frequently demonstrated in their petitions on this subject. U. E. L. admits that the property of the Company of Jesuits amounts in value to millions. He also adds that they will be satisfied with a modest sum. Besides, the recognition of a part of their claim in as good as a recognition of the whole, and as soon as they want more money we fear that they will forget their present modesty and file a claim for the whole.

It is reasonnable to suppose that this is only the insertion of the little end of the wedge. U. E. L. will find on reference to 19 or 20 Vic., Chap. 54, Sec. 2, that the whole of the revenue arising from the Jesuits Estate Fund is specially devoted to the Superior Education Fund. U. E. L. quotes the articles of capitulation 8th September, 1766, in support of his pretensions. He must know that the Quebec

Act of 1774 superseded this. If he will consult article 5 of the Quebec Act, he will discover that in strict law the funds proceeding from the Jesuits' estates must be entirely devoted to Protestant education, because the section provides that the Church of Rome in Canada shall be subject to the supremacy of the king according to the Act 1 Elizabeth, which was in reality a manifest injustice and contrary to the articles of capitulation : *Dura lex sed lex.*

A *resumé* of the foregoing facts results as follows : The Jesuits were suppressed throughout the world in 1773 by Papal brief. They were restored to corporate existence by the same authority in 1804. They were suppressed in France in 1764. It is certain that the order was completely extinct from 1773 to 1804. The Imperial Government knew this, and they were quite justified in assuming the vacant estate. The Canadian bishops, whose authority in ecclesiastical matters and the rights of the church and the status of its members is undoubted, have ever maintained that the property in question reverted to the Roman Catholic Church on the extinction of the order. The Quebec Act settled the question forever. The Province of Quebec owes the order of Jesuits nothing. If any claim exists in equity, for no legal claim exists, it is the Bishop of Quebec who is entitled to restitution and the Imperial authority is the power from whom restitution is due. The Quebec Government of 1874 and their successors have very properly taken this view of the case. The Company of Jesus, from the date of its suppression in 1773 until the year 1887, has had no legal or corporate existence. The Company of Jesus was duly incorporated by the Quebec Parliament during the session of 1887. The Company of Jesus suppressed and extinguished by edict of the French King in 1764, and suppressed by papal brief in 1773, has not had a legal existence in Canada until 1887.

(STAR, *June* 15, 1888.)

THE JESUIT ESTATES.

Side issues.

To the Editor of the STAR :

SIR,—No one would be more pleased than your correspondent to have all "side issues" ruled out of the present controversy, and I regret that your contributor after so praiseworthy a resolve, formally taken, at the opening of his reply, has not adhered to a rule which would cut short much useless discussion.

A Grantee of the Crown not protected against common law remedies.

He exonerates, on grounds too slender, the Provincial Government of all liability in the matter. You have not yet found space, Mr. Editor, for the remainder of my communication, but when it appears I would refer your contributor to the XV heading.

I would state, in the mean time, that the weightiest authority on such matters, Joseph Chitty, in his Prerogatives of the Crown, ch. XVI, sec. IV, does not seem to bear out your contributor in his inference. He says :

" In the case of lands the grantee does not, by taking them from the Crown, acquire any particular privileges. He is not thereby protected against the common law remedies and rights which others may possess in respect of the property, however such remedies and rights might be impeded whilst the King held it."

Jurisdiction not ownership.

Your worthy contributor persists in confounding jurisdiction with ownership. The fact that the bishops in France may or may not have had over the Jesuits "*toute surintendance, juridiction et correction*," would lead no jurist to infer that "therefore when suppressed the property reverted to the bishops." The bishop of Montreal exercises absolutely the same control over the various convents of nuns in the diocese, and nevertheless were they suppressed to-morrow their property would not, in virtue of their suppression, revert to His Lordship.

A body corporate in Canada not amenable in law for real or supposed misdeeds of body corporates elsewhere.

However well it might suit your contributor to draw me after him in the discussion of "side issues," I must, for the present at least, refuse to follow. The question of the *arrêts* of French parliaments, or the case of Lavalette, is indeed "irrelevant." The corporation of Jesuits, recognized as then existing civilly in Canada, can in no wise be held responsible for what has falsely been ascribed to the Jesuits of France.

For those of your readers who wish to be informed on these different points, they will find the whole question lucidly put, with documents

given and authorities quoted, in V vol., *Histoire de la Compagnie de Jésus*, by Crétineau-Joly, chap. IV., V. The author completely vindicates the Society of Jesuits.

Blackstone vs. Thurlow.

To the several dates given by your contributor, I shall add one of two more. Blackstone published the first volume of his commentaries in 1765. Thurlow, who was created Lord High Chancellor of England in June 1778, presented his report to the King on the 22nd of January, 1773, and delivered his speech in the House of Commons in 1774. He was throughly conversant with the doings and decrees of the parliaments and courts in question, and was probably more familiar with Blackstone's utterances than are your contributor and myself; and nevertheless he emphatically declares that the capitulations and treaty are binding on the King. And in what sense? "That every Canadian should have the full enjoyment of all his property, particularly the religious orders of the Canadians." That the treaty "was made in favour of religion, made in favour of the several religious orders."

The "Contributor" again at sea.

"Nor is it pretended in the pamphlet (of 1874) that the confiscation was illegal," says your contributor. His memory is short; but a few lines above he thus quotes from the pamphlet: "The Jesuits in 1773 having been suppressed the Government acquired no right to the property." If the Government seized it, when they had no right to it, the confiscation, to the mind of the writer, was illegal. What is more remarkable, on the very page he quotes from is a heading of a section: "*Usurpation des biens des Jésuites.*" From this page 96 to 104 "the Jesuit" denounces the gradual encroachments of the administration as "usurpations" and "spoliations."

Delegated powers expire with the instrument conferring them.

The writer on page 96 speaks indeed of the powers conferred on the bishop by the decree of suppression, but which he maintains, on page 77, was never promulgated in Canada, and intimates as much on page 96. These special powers were long since revoked by the bull restoring the Society of Jesuits throughout the world. So that were

the estates placed in the hands of the bishops to-morrow, they could put them to no use without previously obtaining the sanction of the Holy See.

Liability of actual possessors.

" There is also on record a letter dated 17th Oct., 1878." Yes, and another, I must add, of the 27th April, 1885, emanating from the most august ecclesiastical authority in Canada, which, in answer to a similar objection, says : " But there still remains the eternal question of justice ! May he who retains the goods of another transfer it to other hands, and thus free himself, or the new possessor, of the obligation of making restitution ? *Res clamat domino*, says a familiar maxim. The actual detainer is always the first bound to restore."

Rome, not the public, the judge in matters ecclesiastic.

For any further answer on the score of the prior claims of the venerable body of the Episcopacy of the province, I refer your readers to the XVII heading of my former communication, which I trust will soon find place in your columns. Let your contributor, meanwhile, keep an even mind ; for neither will our venerable Bishops nor the Jesuits find fault with the decision of the Holy See.

I am sorry that the " little end of the wedge " is again preventing your contributor from being perfectly happy. But when a debtor pays but five cents on the dollar, though the sum be, I admit, ridiculously small, still the legal discharge he receives, sufficiently protects him from further molestation on the part of the creditor.

The King by treaty may preclude himself from the exercise of certain prerogatives. – The Quebec Act once more.

Your contributor, moreover, assures me that " I know that the Quebec Act of 1774 superseded this (the capitulation)." No, I scarcely dare say that I know it. What I have said under the X heading, pg. 36, (see STAR 9th June) even shows clearly that I do not. It is a comfort however, even in the matter of ignorance, to be in good company. Chitty himself did not know it. See Prerogatives, etc., ch. III, pg. 20, edit. London, 1820 : " Nor can the King legally disregard or violate the articles on which the country is surrendered or ceded ; but such articles are

sacred and inviolable according to their true intent and meaning." Page 30: "The King may preclude himself from the exercise of his prerogative legislative authority in the first instance over a conquered or ceded country, by promising to vest in it an assembly of the inhabitants, and a governor, or by any measure of a similar nature, etc." Therefore *a fortiori* he may preclude himself from confiscating private property, even had he a right otherwise to do so. This he did, through his general, at the capitulation of Canada.

But I moreover have proved (X heading) that the Quebec Act, by its own wording, cannot be applied to the case of the Jesuits. Again, if the 5th Art. of the Quebec Act appropriates the Jesuits, Estates (of which there is not even mention made in said article) for Protestant education, the gentlemen of St. Sulpice, the Quebec seminary, the Catholic clergy at large, must forfeit their property. Much more, every loyal Canadian Catholic, who has laid down his life for his Queen, or those who are ready to do so when duty calls, never had any right to their possessions, since not one ever recognized the spiritual supremacy of the Sovereign. Your contributor's assertion becomes incomprehensible when we are clearly told in the 5th Article: "Que le clergé de la dite Église (de Rome) peut tenir, recevoir et jouir de ses dûs et droits accoutumés, eu égard seulement aux personnes qui professent la dite religion."

English penal and common law as such do not hold in the Colonies.

The penal laws had no existence whatever in Canada—see opinion of Lord North (VIII heading, pg. 35; STAR 9th June). Chitty goes still further: "Hence it is clear that, generally speaking, the common law of England does not, as such, hold in the British colonies." (Prerogat, ch. III., pg. 32). Therefore it does not follow that because the Jesuits were an illegal society in England they were illegal also in Canada.

The Society of Jesus never totally extinct.

I must disagree on another point with your contributor. The Jesuits were never completely extinct. They continued in Russia, even after 1773, what they had been before. The *Oracula vivae vocis* of Pius VI, on the 24th July, 1785, recognized their status in that empire. They elected their General as usual and were authorized to receive novices. The brief "*Catholicae Fidei*" of Pius VII, 7th March, 1801, reinstated

them there in all their rights. The brief "*Per alias*" extended these rights to the Two Sicilies, and finally the Bull "*Solicitudo Omnium*," rehabilitated them throughout the world. They never ceased to exist canonically in Canada as the brief "*Dominus ac Redemptor*" was never published here.

Wrong to be righted.—Conquest the title officially alleged.

From what I have said in this and the former communication it follows: That the Jesuits, as a body corporate, were guaranteed their possessions at the capitulations and treaty. That they were illegally inhibited from receiving new members. That they remained a body corporate at least until 1791, the date of the Royal Instructions for their civil suppression. Were these ever promulgated? That before the law, it is a mere "side issue," what their status was in France, as their headquarters as a corporation were in Canada.

That at the death of the last Jesuit, in 1800, the estates were illegally vested in the Crown by a seizin. This was done, not by title through escheat, but by title of conquest. (See Writ to Ja. Sheppard, Sheriff, dated March 8, 1800. Registered—Qnebec, 1 Reg., folio 446.) When the property was conveyed to the Provincial Government, the same title was given: "the tenure of which is stated to be the conquest of 1756 and the Provincial Act, 17 Vic., ch. 11." Signed, Edw. Blake—Ottawa, May 10, 1879. And as no statute can render void a treaty, it follows that a gross injustice was perpetrated, for which the public conscience demands redress.

June 14, 1888. U. E. L.

The General's attributes in financial matters. The non solidarity of seperate houses assailed in the Jesuits' Institute alone.

(STAR, *June* 16, 1888.)

(XI. *Continued from page* 38).

In the meantime, I most formally and emphatically deny the truth of the assertion that the title to the property of the Jesuits is vested in the General of the Jesuits at Rome. Like the president, or avowed head, of any civil corporation, whose field of action may extend to more than one country (let us take the G. T. R. for instance, whose lines extend into the neighboring States), the General of the Jesuits exercises a certain control over the movable and immovable property of the order. He is not the owner. Let your contributor recall what I have already said under the 1st heading concerning the non-solidarity of the different houses of the society. He cannot take from one house to give to another. His office is to administer, through himself or others, the estates belonging to these separate houses, and may pass contracts only to the advantage and for the utility of these houses, (Constitut. P. IX, C. IV.; Examen gen., C. I., No. 4; Bulla, Greg. XIII, 1582). If the annual income of the colleges, destined, in virtue of the intention of founders or of the provisions of the institute, for the sustenance and clothing of the Jesuits who are their inmates, exceed the outlay, the surplus in each house is to be employed, not in new establishments, but in liquidating outstanding debts or increasing the revenues (Inst. pro admin., tit. pro rect, No. 6). Both Church and State had recognized this right of non-solidarity. For when one house was in penury, its revenues being insufficient, both powers, without taking into consideration the comparative prosperity of other houses, assisted the poorer house with their endowments. They recognized thus their non-solidarity.

In France down to 1760 no one ever though of questioning this non-solidarity which all religious orders enjoyed in common with the Jesuits. Subsequently it was never assailed in other institutes, it was attacked only in that of Loyola. It was alleged that the general of the society held despotic sway, that he was absolute master of persons and things, and consequently universal proprietor of all the worldly goods of the order. According to the terms of their constitution, this assertion was groundless, but under the influence of certain bitter hatreds it assumed the proportions of a principle.

The General incapacitated by his vow from holding property in his own right. His functions those of a Superintendent.

The legislation of the Institute is nevertheless clear on this point. The General is ranked in the same category as his brethren ; if they cannot hold property, in their own right, for having vowed perpetual poverty, neither can be, for the same identical reason. In religious societies it is not the individuals nor the superior who possesses, but the various establishments, as bodies corporate, legally recognized as such before both civil and ecclesiastical law. The text of Loyola's constitutions exhibits every where the General as the administrator and not the proprietor of the Society's possessions. In his administration, which the constitutions (P. IV. c. 11) term superintendence, as it is he who names the other superiors, who must give him an account of their administration, the General is subject, on all essential points, to the control of general congregations. Without their assent, he can neither alienate nor suppress a collège or other establishment, and the breach of this law would be for him a case of deposition, or even expulsion from the society, provided for in the constitutions (P. IX. c. 4). He is empowered to accept property or donations for the Society ; he may, when the intention of the donor is not determined, allot them to this or that house ; but once they are allotted, it is beyond his powers to divert what accrues, or to collect a percentage on the revenues either for his own use or for strangers.

As a constituted corporation, the Society was of Canada.

But had it even been the case, as far as France was concerned, at the time of the conquest and after, it certainly was not the General who held possession of the Jesuits' estates in Canada. The merest tyro in jurisprudence is able to appreciate the meaning of the letters patent and of the Royal Instructions. Louis XIV styles the Jesuits : " Nos chers et bien aimez les religieux de la compagnie de Jésus *résidant en nostre pays de la nouvelle France*," and the Royal Instructions of the 16th September, 1791 : " the present members of the said society (*i. e.*, society of Jesuits already mentioned) *as established at Quebec.*" There is no question here of a sole but of an aggregate corporation ; no question of the General of the Society, but of the body established at Quebec. To all intents and purposes, for a Canadian court, the

General was a legal nonentity. It was this all important point that Marriot in his bitter hatred feigned to overlook, and that your contributor, taking him at his word, has so thoughtlessly ignored.

Hence all the title to property existing was not vested in the General at Rome.

The nationality of the General, a "side issue."

XII

"The General being an Italian and an alien, not owing allegiance to the King of France, could hold no real property either in France or in its colonies. This was the law in France in 1763, up to the conquest, and the law of England was the same at the date of or after the conquest."

For once, Mr. Editor, to your great relief, not less than to my own, I may be short.

I shall not enquire at what particular date the disability of foreigners to hold property in France ceased. The thing is also entirely foreign to the subject, and its inability of proving anything against the Jesuits' claims equally manifest. Who ever told your contributor that foreigners, at that period, could hold property in France or England? Certainly no Jesuit ever maintained it. I shall not begrudge your contributor all the comfort he can derive from this harmless assertion.

As years roll on youth will wane. The Jesuits recognised at last to be what they had never ceased to be.

XIII

"The present Company of Jesuits have had a legal existence in this province for only a few months."

I acknowledged already that they were a very unreasonable lot. Only a few months! They have scarely begun to enjoy civil life, when, in downright earnest, they, like their other civil fellow-beings, seem alive to the fact that their civil existence entails certain civil obligations, but at the same time also certain civil rights. The Apostle of the Gentiles was given to the same little weakness.

A certain man was ejected from his homestead under pretence that he held it for a foreigner. For it was known that his mother-in-law was a Pennsylvania Dutch woman, and she ruled the household. The

country he lived in was, legislatively speaking, a little backward, so that a foreigner could not hold property. The man protested that he held it in his own name ; but through the stupidity of his lawyer, or perhaps there was boodle in the case, his titles were not thought to be in order. He reluctantly went west, to the land of the blizzard ; but was frozen out of Dakota and returned a few years later. The land meanwhile had been sold for a mere song to an honest citizen. Our friend, this time, engaged an Ontario lawyer, who, to make certainty doubly sure, told him to take out his naturalization papers. Only a few months later, the case came into court. The lawyer proved the titles clear. The honest man gave up the farm, and the last that was heard of him was that he was looking for the boodler.

Moral – Never allow many months to go by, after you qualify, without claiming what belongs to you.

XIV

" They cannot pretend to be the successors to a company which never had any legal existence."

If we are to believe what is oftentimes said of them, they scarcely could. Only I remind your contributor that the society had de facto down to 1791 a very distinctly defined legal existence ; and that consequently de jure have never ceased to have a legitimate existence. For wrong is to be redressed when and wheresoever it is detected. Time can never legitimate injustice. There is no room for prescription when there is mala fides at the inception.

The Province amenable. (See also page 43).

XV

" At any rate it is quite clear that the Province of Quebec has nothing to do with the question since the forfeiture of the former so called Jesuits property was effected by the Imperial Government."

This is a new principle in law. The detainer of ill-gotten goods must not be molested by the rightful owner. We recommend it to the commission for the codification of our laws.

At any rate, it does not fairly convey the same meaning as that conveyed by the written communication of a very high ecclesiastical dignitary to the head of a late cabinet, on the 27th April, 1880 :—

" But the eternal question of justice still remains ! May the one

who holds the goods of another transfer them to other hands and thus free himself or free the new possessor of the obligation to restore? "Res clamat Domino," says a well known axiom. The detainer is always the first bound to make restitution." These are the words of wisdom and of sound ethics. Nor shall I presume to dilate on them.

A Document out of date.

XVI.

"When Clement XIV suppressed the Company of Jesus in 1773, he provided that their property should return to the Church for pious uses."

That is, wherever the Society of Jesus was canonically suppressed, the bishop, acting as minister in the execution of the decree was to take possession of their goods, etc., and hold them for such uses as the Holy See should designate: "Bonorum, etc., possessionem nomine Sanctæ Sedis apprehendat et retineat pro usibus a Sanctissimo designandis."

Now it is a historical fact that Lord Dorchester intervened and deterred Mgr Briand from sequestrating the estates, so as they were not taken they could not be held for purposes to be determined by the Holy See. The commission delivered to the bishops, to act thus in the name of the Holy See, lasted just so long as the brief of suppression was in force. It was annulled by the bull *Sollicitudo Ominum* of Pius VII, in 1814, which allowed the Jesuits, who had never ceased to exist in Russia, to reorganize the Society once more throughout the world. So it is rather late in the day to invoke the documents emanating from the Holy See, at the time of the suppression, as sanctioning any action that might at present be taken. After the re-establishment of the Society throughout the world, the Holy See, very naturally, restored to the Society what had been taken in those places *where it was canonically suppressed.* Pius VII and Leo XII were foremost in this work, and their example was followed by several Christian monarchs.

The Bishops "ex officio" the administrators of Church property temporarily or irremediably "vacant."

XVII.

"The following clause in a petition to the Legislature of Quebec is conclusive proof that the claim of the Jesuits was inadmissible: Your

petitioners humbly represent that the order of Jesuits being extinct in this country, their naturel successors are the Roman Catholic bishops of the diocese."

It is a conclusive proof of no such thing. It is a pity your contributor has such a short memory. But a few phrases above he gravely told us that the Jesuits could not pretend to be the successors to a company which never had any legal existence, and now he supposes that the bishops were capable of so silly an act. This is scarcely respectful, coming from the quarter from which the communication of Saturday, 19th May, proceeds. Their Lordships were at least shrewd enough to perceive, that if they claimed to be the natural successors to a company which never had any legal existence, they would stand a very poor chance of being listened to. I shall not do them so grievous a wrong, but shall say they therefore acknowledged that the Jesuits were the real proprietors, and that it was only because the Order was extinct in this country that they claimed control over the estates.

Canon law, in fact, imposes on them the obligation ex officio of seeing that no pious foundation be diverted from the purpose for which it was made. They acted, consequently, in this matter wisely, and in accordance with the dictates of their conscience. Had the province listened to them and placed the estates in their hands, the property would have remained in their keeping, in trust, either until the return of the Jesuits, or until the Holy See had given directions as to its application.

Allow me here, Mr. Editor, in reference to the venerable body of rhe Episcopate of this Province and to the Jesuit fathers, to make one point clear. The Papal indult placed in the hands of the Procurator of the Jesuits, was given them, because they alone could given a legal discharge, or receipt in full to the Province, and so ease the public conscience. The Society of Jesus, once it has received the sum the Government proposes to give, is not empowered to appropriate to its own use one single farthing, until the Holy See has determined whether or not a division is to be made, and what portion of the sum is to be placed at its disposal. Therefore there is no conflict, as your contributor would have us believe, between the venerable body of the Episcopate and the Society of Jesus.

A pretext for Vandalism. Dynamite vs. Jesuit mortar.

XVIII.

" In 1877 it was resolved to demolish the buildings (the old College in Quebec) on account of their dangerous state."

It would be here the place for every lover of our common country to exclaim : " Infandum, regina, jubes renovare dolorem ! " The old college was the cradle of classical learning in North America. It was founded in 1635, one year before Harvard University.

I shall not attempt to give the particulars of its demolition, it was a piece of vandalism ; and it would take more espace than you could afford me to lay bare the numerous intrigues which resulted in its demolition. The true motives were held back, and the vain pretext, that it threatened ruin, was put forward.

In June 1877, M. Baillarge, the engineer of the corporation of Quebec, affirmed in a written document : "La couverture est encore excellente et meilleure que beaucoup de couvertures dernièrement faites à Québec..... Les murs son parfaitement bons, saufs dans le voisinage du sol, quelques écoinçons en partie degradés.... Il y a à réparer presque tous les planchers, toutes les croisées et portes extérieures et intérieures, les plafonds, cloisons, etc., en un mot tout l'intérieur qui a beaucoup souffert dernièrement de la part des incendiés du quartier Montcalm, qui se sont servis de la charpente et menuiserie de l'intérieur pour se chauffer en hiver."

M. Faucher de St-Maurice, in his " Relation de ce qui s'est passé. etc., Québec, 1879," and who was an eye-witness to the whole proceeding, makes the following observations at page 22 :

" Pendant quelques années, les murs silencieux du vieux collège des Jésuites semblèrent se recueillir, jusqu'au jour où la charité revenant frapper à la porte des cellules des Pères, celles-ci se rouvrirent pour donner l'hospitalité à une partie de la population du quartier Montcalm, qu'un incendie venait de chasser de leurs demeures.

Erigé pour venir en aide aux souffrances humaines, le collège des Jésuites finissait comme il avait commencé. Il redevenait l'asile des malheureux, et les pauvres y trouvèrent un abri, jusqu'à ce que certains philanthropes s'rperçurent que ses murailles étaient dilapidées et dirent qu'elles menaçaient la vie des passants. Il fallut alors en finir au plus vite. La bande noire s'abattit sur cette relique de notre passé. Mais, chose étrange ! Ces pierres branlantes, condamnées comme étant dangereuses, résistèrent à la sape et à la mine. Le bélier,

la poudre à canon mordirent à peine dans ces assises, où le mortier avait la consistance du granit. On employa les plus forts explosibles connus pour avoir raison de ces murs, et encore la maçonnerie du frère LeFaulconier, la charpente du frère Ambroise Cauvet, ne semblèrent s'écrouler qu'à regret, mettant à découvert des ossements que des rapprochements de faits et des coincidences historiques semblent identifier avec ceux du frère Jean Liégeois, le grand architecte qui avait eu 'la surintendance du tout,' et à qui, pendant 214 ans, son œuvre aurait ainsi servi de tombeau.

They wiped out the oldest institution of learning in North America.

Dans quelques jours, il ne restera plus rien de ce qui fut, pendant cent quatorze ans, l'Alma Mater de l'instruction dans l'Amérique du Nord. Plus vieux d'une année que le collège de Harvard, près de Boston, celui des Jésuites de Québec n'existera plus maintenant que dans les souvenirs de ceux qui ont la fièreté de leur passé."

Good intentions, not less than malice, may work sad havoc.

Mr. Editor, I leave you, and the public in general, to judge whether I have been justified or not in asserting that the communication, with which I find fault, is a long misstatement of the case. I have not insisted on one of the opening phrases, in which your contributor styles the Society of Jesus a recently created order. For I would fain suppose that on these as on other points, he has simply been misinformed, and had no intention of doing a grievous injury to a Society whose history is interwoven with the whole history of the colony, our now common country. I take therefore his words as implying nothing more than that on the supposition that the Society never having before in his judgment been a body corporate, it, at the moment of its incorporation, became in a legal sense a newly created order.

Albion n'est pas perfide. What would constitute perfidy.

Is it necessary, Mr. Editor, that I should explain the reason of my trespassing so ruthlessly on your limited space? Brought up in the admiration of England and of every thing English, my first impressions

of her chequered history were that never had she, nor never was she capable of violating her sacred promises once only pledged. My obyish ideas, as those, no doubt, of the young generation rising around us, though not formulated with all the preciseness of a DeVattel, might, however, be rendered in his words: "Let us simply observe, that an evidently false interpretation is the grossest imaginable violation of the faith of treaties. He that resorts to such an expedient, either impudently sports with that sacred faith, or evinces his inward conviction of the degree of moral turpitude annexed to the violation of it: he wishes to act a deshonest hart, and yet preserve the character of an honest man; he is a puritanical impostor, who aggravates his crime by the addition of a detestable hypocrisy....."

"Our faith may be tacitly pledge as well as expressly; it is sufficient that it be pledged, in order to become obligatory; the manner can make no difference in the case, the tacit pledging of faith is founded on a tacit consent; and a tacit consent is that which is, by fair deduction, inferred from our actions. Thus, as Grotius observes (L. III c. 24; § 1), whatever is included in the nature of certain acts which are agreed upon is tacitly comprehended in the agreement, or in other words, everything which is indispensably necessary to give effect to the articles agreed on is tacitly granted." (Chitty's DeVattel—Law of Nations, B. II, ch. 15. § 233).

What England owes to the descendants of the heroic handful, headed by de Montcalm and de Levis, who, abandoned by their own mother country, hoped against hope, and defended to the last their hearthstones and their altars, must be defined not by the Treaty, taken alone, but by Treaty and capitulations taken in the complex. For the latter are as sacred as the former.

"Since the general of an army and the governor of a town must be naturally invested with all the powers necessary for the exercise of their respective functions, we have a right to presume that they possess those powers; and that of concluding a capitulation is certainly one of the number, especially when they cannot wait for the Sovereign's order. A treaty made by them on that subject is therefore valid and binds the sovereigns in whose names and by whose authority the respective commanders have acted." (Chitty's De Vattel, B. III; c. XVI, § 261).

Their articles are not cancelled by a definitive treaty, unless it be clearly so stated and agreed upon. "In things favorable (in interpreting treaties) it is better to pass beyond that point, than not to reach it; in things odious, it is better not to reach it, than to pass beyond it. (Ibid. B. II; c. 17; § 300).

" Whatever tends to change the present state of things is also to be ranked in the class of odious things ; for the proprietor cannot be deprived of his right, except so far, precisely, as he relinquishes it on his part; and, in case of doubt, the presumption is in favor of the possessor. It is less repugnant to equity to withhold from the owner a possession which he has lost through his own neglect, than to strip the just possessor of what lawfully belongs to him. In the interpretation, therefore, we ought rather to hazard the former inconvenience than the latter. Here also may be applied, in many cases, the rule we have mentioned in § 301, that the party who endeavors to avoid a loss has a better cause to support than he who aims at obtaining an advantage." (Ibid. § 305).

By whom the wrong was perpetrated.

These, Mr. Editor, are no doubt your sentiments also, and those of the honest public. And if any of us were called upon to act as arbiters in a case in which we have no interest at stake, our natural sense of equity would supply our deficiency in technical training, and prompt us to adjudicate according to these notions.

And no doubt we all thought that no reproach could be laid, on that score, at the doors of our own Mother Country. At least it was my own settled conviction, until, in studying more closely the history of this colony, I was rudely startled by the fact that an injustice had been done by some one in her name. It was not done by the law officers in England, who for thirty years refused to legalize the proposed spoliation, avowing that they could not determine over what properties of the Order of Jesuits His Majesty might claim full control, and which he could consequently legally grant to Lord Amherst's heirs. The iniquity was consummated on the advice and with the concurrence of a handful of men within the limits of this province, men who had not at heart the true interests of their sovereign nor of their country.

Justice enobleth a nation.

If the Hon. Mr. Mercier succeeds in effacing this blemish from our nation's history, of easing the public conscience, for I suppose there must be such a thing, he will deserve the gratitude of generations to come.

There is, however, one shoal on which this great project may come

to grief, and which he must shun at all hazards, it is this : That while aiming at reducing to a minimum, for the advantage of the province, the sacrifice to be made, it is just possible that a fresh injury may be inflicted, by forcing the Jesuits to accept, as a final settlement, a compensation wholly out of proportion to their immense possessions so unjustly confiscated. For not taking into account that but a portion of that sum may eventually go into their hands, it leaves no chance for redress. That he may have the courage to turn a deal ear to the clamours of a few prejudiced politicians, it will be well for him to bear in mind that *Justitia elevat gentem.*

May, 26th, 1888.

U. E. L.

Grateful acknowledgment to the "Star."

(STAR, *June* 19).

THE JESUITS ESTATES.

To the Editor of the STAR :

SIR,—In reading over the last instalment of my all but interminable correspondence, I notice that a mistake of some consequence has crept in, *suadente diabolo*, I mean the printer's. The intelligent reader will kindly save me the trouble of correcting other slips of minor importance. I refer to a phrase under the XV heading, which would make sense if read as follows :

" At any rate, it does *not* fairly convey the same meaning as that conveyed by the written communication, etc."

I take this occasion, Mr. Editor, to thank you for having so hospitably opened your columns to a stranger, whose only title to much kindness on your part was that spirit of Anglo-Saxon fairness, with which he rightly supposed you to be animated.

Yours, etc.,

U. E. L.